

Exhibit C

**ROBERT BOWES
SMARTMATIC USA vs LINDELL**

August 06, 2024

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<p>1 UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF MINNESOTA</p> <p>3</p> <p>4 SMARTMATIC USA CORP,) Case No.</p> <p>5 et al.,) 22-cv-98-JMB-JFD</p> <p>6 Plaintiffs)</p> <p>7 vs.)</p> <p>8 LINDELL, et al.,)</p> <p>9 Defendants.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13 Remote Videotaped Deposition of</p> <p>14 ROBERT BOWES</p> <p>15 August 6, 2024</p> <p>16 9:32 a.m. CT</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Reported by: Bonnie L. Russo</p> <p>22 Job No. J11561326</p>	<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 CHRISTOPHER LETKEWICZ, ESQUIRE</p> <p>4 JANE MOYE-ROWLEY, ESQUIRE</p> <p>5 BENESCH FRIEDLANDER COPLAN & ARONOFF</p> <p>6 71 South Wacker Drive, Suite 1600</p> <p>7 Chicago, Illinois 60606</p> <p>8 cletkewicz@beneschlaw.com</p> <p>9 jmoye-rowley@beneschlaw.com</p> <p>10</p> <p>11 On behalf of the Defendants:</p> <p>12 CHRISTOPHER KACHOUROFF, ESQUIRE</p> <p>13 McSWEENEY CYNKAR & KACHOUROFF, PLLC</p> <p>14 13649 Office Pl, Suite 101</p> <p>15 Woodbridge, Virginia 22192</p> <p>16 chris@mck-lawyers.com</p> <p>17</p> <p>18 Also Present:</p> <p>19 Don Savoy, Videographer</p> <p>20</p> <p>21</p> <p>22</p>
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<p>1 Remote Videotaped Deposition of Robert Bowes</p> <p>2 held through:</p> <p>3</p> <p>4</p> <p>5</p> <p>6 Esquire Deposition Solutions</p> <p>7 1717 K Street, N.W.</p> <p>8 Washington, D.C.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 Pursuant to Notice, when were present on behalf</p> <p>19 of the respective parties:</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 C O N T E N T S</p> <p>2 EXAMINATION OF ROBERT BOWES PAGE</p> <p>3 BY MR. LETKEWICZ 8</p> <p>4</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8</p> <p>9 Exhibit 673 Expert Report by 14</p> <p>10 Donald A. Gorowsky</p> <p>11 9-22-23</p> <p>12 Exhibit 674 Defendants' Expert 17</p> <p>13 Rebuttal Report of</p> <p>14 Robert Bowes</p> <p>15 7-9-24</p> <p>16</p> <p>17 Exhibit 675 Native Messages 20</p> <p>18 DEF079498.000001-004</p> <p>19 Exhibit 676 Smartmatic USA Corp 166</p> <p>20 Financial Statements</p> <p>21 Year Ended December 31, 2021</p> <p>22 SMARTMATIC-LINDELL05358530-560</p> <p>Exhibit 677 Smartmatic USA Corp 181</p> <p>Financial Statements</p> <p>December 31, 2020 and 2019</p> <p>SMARTMATIC-LINDELL05062317-343</p> <p>Exhibit 678 Smartmatic USA Corp 183</p> <p>Financial Statements</p> <p>Year Ended December 31, 2022</p> <p>SMARTMATIC-LINDELL05358499-529</p>

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<div>Page 5</div> <div>1 EXHIBITS (CONTINUED):</div> <div>2 Exhibit 679 Article entitled 193</div> <div>3 "Smartmatic to Shed</div> <div>4 U.S. Unit, End Probe Into</div> <div>5 Venezuelan Links" 12-22-06</div> <div>6 Exhibit 680 Article entitled 197</div> <div>7 "Smartmatic defeats patent</div> <div>8 lawsuit from voting machine</div> <div>9 rival ES&S" 4-25-23</div> <div>10 Exhibit 681 Excerpt of Judgment 197</div> <div>11 Election Systems & Software,</div> <div>12 LLC vs. Smartmatic USA Corp.</div> <div>13 4-23-23</div> <div>14 Exhibit 682 News Releases 203</div> <div>15 10-4-22</div> <div>16 Exhibit 683 IAS 38 216</div> <div>17 Intangible Assets</div> <div>18 Exhibit 684 Forensic & Valuation Services 225</div> <div>19 Practice Aid</div> <div>20 Calculating Lost Profits</div> <div>21 Exhibit 685 Plaintiffs' Sixth 240</div> <div>22 Supplemental Answers and</div> <div>Objections to Defendant</div> <div>My Pillow, Inc.'s First</div> <div>Set of Interrogatories</div> <div>Exhibit 686 Expert Rebuttal Report of 276</div> <div>Christopher James</div> <div>7-9-23</div> <div>Exhibit 687 First Supplemental Complaint 287</div> <div>and Demand for Jury Trial</div>	<div>Page 7</div> <div>1 PROCEEDINGS</div> <div>2 (9:32 a.m. CT)</div> <div>3</div> <div>4 THE VIDEOGRAPHER: We are now on</div> <div>5 the record. The time is 9:32 a.m. Central</div> <div>6 Time. Today is August the 6th of 2024.</div> <div>7 This begins the videoconference</div> <div>8 deposition of Robert Bowes. The case is</div> <div>9 Smartmatic USA Corporation, et al., versus</div> <div>10 Lindell, et al.</div> <div>11 My name is Don Savoy. I am the</div> <div>12 remote videographer today. The court reporter</div> <div>13 is Bonnie Russo. We are representing Esquire</div> <div>14 Deposition Solutions.</div> <div>15 Counsel, please state your name and</div> <div>16 whom you represent, after which the court</div> <div>17 reporter will swear in the witness.</div> <div>18 MR. LETKEWICZ: Good morning. Chris</div> <div>19 Letkewicz on behalf of the Smartmatic</div> <div>20 plaintiffs.</div> <div>21 MS. MOYE-ROWLEY: Jane Moyer-Rowley</div> <div>22 on behalf of Smartmatic plaintiffs.</div>
<div>Page 6</div> <div>1 EXHIBITS (CONTINUED):</div> <div>2 Exhibit 688 Exhibit 106 304</div> <div>3 Article entitled "Scientists</div> <div>4 say no credible evidence of</div> <div>5 computer fraud in the 2020</div> <div>6 election outcome, but</div> <div>7 policymakers must work with</div> <div>8 experts to improve confidence" 11-16-20</div> <div>9</div> <div>10 Exhibit 689 Article entitled 315</div> <div>11 "Filipinos use election</div> <div>12 technology to cast 1.6B votes</div> <div>13 for 18K positions" 5-10-22</div> <div>14</div> <div>15 Exhibit 690 Text Messages 324</div> <div>16 11-1-23</div> <div>17 Exhibit 691 Text Messages 327</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22 (Exhibits bound separately.)</div>	<div>Page 8</div> <div>1 THE VIDEOGRAPHER: Sir, you're</div> <div>2 muted.</div> <div>3 MR. KACHOUROFF: Sorry about that.</div> <div>4 Christopher Kachouroff on behalf of</div> <div>5 Michael Lindell and My Pillow. Thank you.</div> <div>6</div> <div>7 ROBERT BOWES,</div> <div>8 being first duly sworn, to tell the truth, the</div> <div>9 whole truth, and nothing but the truth,</div> <div>10 testified as follows:</div> <div>11 MR. LETKEWICZ: I heard an echo.</div> <div>12</div> <div>13 EXAMINATION BY COUNSEL FOR PLAINTIFFS</div> <div>14 BY MR. LETKEWICZ:</div> <div>15 Q. All right. Can you please state you</div> <div>16 name for the record.</div> <div>17 A. Robert Bowes.</div> <div>18 Q. Have you been deposed before?</div> <div>19 A. Yes.</div> <div>20 Q. How many times?</div> <div>21 A. Maybe ten.</div> <div>22 Q. And when was the last time you were</div>

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<p style="text-align: right;">Page 9</p> <p>1 deposed?</p> <p>2 A. I can't recall specifically. Say</p> <p>3 several years ago.</p> <p>4 Q. All right. Because it has been a</p> <p>5 few years, I will go over some quick ground</p> <p>6 rules with you.</p> <p>7 I'm going to be asking a number of</p> <p>8 questions. It's important for you to let me</p> <p>9 finish my question before you provide an answer</p> <p>10 because the court reporter cannot take down</p> <p>11 what's being said by two people at the same</p> <p>12 time.</p> <p>13 Do you understand that?</p> <p>14 A. Yes.</p> <p>15 Q. If I ask you a question that you</p> <p>16 don't understand, do you agree to ask me to</p> <p>17 clarify the question?</p> <p>18 A. I will.</p> <p>19 Q. If you answer a question, will it be</p> <p>20 fair to say that you understood the question?</p> <p>21 A. Generally, yes.</p> <p>22 Q. If at any point today you need a</p>	<p style="text-align: right;">Page 11</p> <p>1 A. My son is in the -- in the home.</p> <p>2 Q. But in the room, you're -- in the</p> <p>3 deposition, no one else is with you in the</p> <p>4 room?</p> <p>5 A. Correct.</p> <p>6 Q. Do you have your expert reports with</p> <p>7 you?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Other than your reports, do you have</p> <p>10 any notes or documents in front of you?</p> <p>11 A. Some handwritten notes from some --</p> <p>12 from some work papers.</p> <p>13 MR. LETKEWICZ: Okay. Chris, if</p> <p>14 those haven't already been produced, we ask</p> <p>15 that those be produced during a break.</p> <p>16 MR. KACHOUROFF: Okay.</p> <p>17 BY MR. LETKEWICZ:</p> <p>18 Q. All right. And -- okay.</p> <p>19 Other than the application for this</p> <p>20 deposition, do you have any programs or</p> <p>21 applications open?</p> <p>22 A. No.</p>
<p style="text-align: right;">Page 10</p> <p>1 break, that's no problem. The only thing I</p> <p>2 would ask is that if a question is pending,</p> <p>3 that that question be answered before you take</p> <p>4 a break. Is that fair?</p> <p>5 A. Fair enough.</p> <p>6 Q. Okay. Do you understand that you</p> <p>7 are under oath today?</p> <p>8 A. I do.</p> <p>9 Q. Do you understand that it's the same</p> <p>10 oath that you would take in a court of law?</p> <p>11 A. Yes.</p> <p>12 Q. Any reason you cannot testify fully</p> <p>13 and truthfully today?</p> <p>14 A. No reason.</p> <p>15 Q. Because we are doing this deposition</p> <p>16 virtually, I'm going to ask you a few</p> <p>17 additional questions I would not normally ask</p> <p>18 if we were in the same room.</p> <p>19 Where are you located?</p> <p>20 A. Arlington, Virginia.</p> <p>21 Q. Is there anyone present with you</p> <p>22 there?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. And are you currently in any kind of</p> <p>2 electronic or other contact with anybody</p> <p>3 outside of the room?</p> <p>4 A. No.</p> <p>5 Q. Do you agree to not be in such</p> <p>6 contact with anyone, including counsel for Mr.</p> <p>7 Lindell, while we are on the record, unless you</p> <p>8 first tell me that you're doing so?</p> <p>9 A. So could you please clarify that.</p> <p>10 If I receive a text from -- from someone, then</p> <p>11 do I tell you that I am receiving I text or --</p> <p>12 because I -- if it's, like, personal or</p> <p>13 something, what do I do?</p> <p>14 Q. Yeah. I mean, basically what I am</p> <p>15 saying is that you're not going to look at your</p> <p>16 phone or look at your text messages while we're</p> <p>17 on the record.</p> <p>18 Do you agree to do that? Other than</p> <p>19 answering my questions.</p> <p>20 A. So if -- if my son's mom has to text</p> <p>21 me about something urgent, then you don't want</p> <p>22 me to look at that; is that right? I</p>

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<p style="text-align: right;">Page 13</p> <p>1 don't know if I can agree --</p> <p>2 Q. If it's urgent -- if it's urgent --</p> <p>3 MR. KACHOUROFF: Chris, I think we</p> <p>4 can solve this. Chris, no one is going to talk</p> <p>5 to him during the deposition. No one is going</p> <p>6 to feed him information or questions. He</p> <p>7 stands or rises on the questions that you ask</p> <p>8 him. So he won't be talking to me. He won't</p> <p>9 be talking to anybody, but if he has a family</p> <p>10 emergency in a text, he is going to answer the</p> <p>11 text.</p> <p>12 MR. LETKEWICZ: That is totally</p> <p>13 fine. Okay.</p> <p>14 BY MR. LETKEWICZ:</p> <p>15 Q. All right. There are three</p> <p>16 Smartmatic companies that are plaintiffs in</p> <p>17 this case. I will refer to them collectively</p> <p>18 as Smartmatic for purposes of the deposition.</p> <p>19 Is that okay with you?</p> <p>20 A. No. Break them out, please.</p> <p>21 Q. Okay.</p> <p>22 A. Yeah. They're -- they're different</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. This is -- I'll just tell you that</p> <p>2 Plaintiffs' Exhibit 673 is the September 22,</p> <p>3 2023 report of Donald Gorowsky. And I</p> <p>4 understand that is one of the reports you have</p> <p>5 in front of you, correct?</p> <p>6 A. I don't have it right in front of me</p> <p>7 now, but I can. Is this the PDF you just --</p> <p>8 you just sent in the chat?</p> <p>9 Q. Correct.</p> <p>10 A. If I open that, I can -- then, yes,</p> <p>11 it will be right in front of me.</p> <p>12 Q. Perfect.</p> <p>13 Do you have it open in front of you</p> <p>14 now?</p> <p>15 A. Yes.</p> <p>16 Q. All right. I understand that you</p> <p>17 have adopted the opinions and bases thereof in</p> <p>18 Mr. Gorowsky's report; is that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Is all of the information in Mr.</p> <p>21 Gorowsky's September 22nd report true and</p> <p>22 correct to the best of your knowledge?</p>
<p style="text-align: right;">Page 14</p> <p>1 legal entities, right? So when you blend them</p> <p>2 together like that, it can be very confusing.</p> <p>3 Q. Here is what I'll do is if I use the</p> <p>4 term "Smartmatic," I am referring to Smartmatic</p> <p>5 USA, Smartmatic International B.V. and SGO</p> <p>6 Corporation collectively. If I am -- if my</p> <p>7 question calls for a specific entity, I will</p> <p>8 use that specific entity name. Okay?</p> <p>9 A. Fair enough. That's good.</p> <p>10 MR. LETKEWICZ: All right. Can you</p> <p>11 please put in the chat Tab 1, please, and this</p> <p>12 will be marked as Plaintiffs' Exhibit 673.</p> <p>13 (Deposition Exhibit 673 was marked</p> <p>14 for identification.)</p> <p>15 BY MR. LETKEWICZ:</p> <p>16 Q. And let me know when you have it.</p> <p>17 A. Where do I see the chat?</p> <p>18 Q. There is a chat -- if you look in</p> <p>19 the middle -- it should be in the middle of</p> <p>20 your Zoom. There should be a button on the</p> <p>21 bottom called chat.</p> <p>22 A. Got it.</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Yes.</p> <p>2 Q. To make things -- because you've</p> <p>3 adopted Mr. Gorowsky's report, I will refer to</p> <p>4 this report as your September 22nd report; is</p> <p>5 that okay?</p> <p>6 A. As if it's mine?</p> <p>7 Q. Yes.</p> <p>8 A. I think that -- you know, that there</p> <p>9 has been some additional discovery that has</p> <p>10 come in since then. So if you're trying anchor</p> <p>11 something as a temporal base, I cannot agree to</p> <p>12 that because my adoption report deals not only</p> <p>13 with the Gorowsky report but it deals with</p> <p>14 additional discovery and information that has</p> <p>15 come out since that time.</p> <p>16 Q. All right. Well, I will -- I will</p> <p>17 then just refer to it then as Mr. Gorowsky's</p> <p>18 September 22nd report.</p> <p>19 A. Okay.</p> <p>20 MR. LETKEWICZ: Put Tab 2 in the</p> <p>21 chat, Jane. And this will be marked as</p> <p>22 Plaintiffs' Exhibit 674.</p>

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<p style="text-align: right;">Page 17</p> <p>1 (Deposition Exhibit 674 was marked 2 for identification.) 3 BY MR. LETKEWICZ: 4 Q. Do you have your report open? 5 A. No. Not yet. So there is no -- I 6 can't download it. It is not letting me do it. 7 I can't open it. 8 Q. There should be a little arrow 9 button on 674. 10 A. To the upper right of it? No. 11 There was on 673, but it's not -- hold on. 12 There we go. 13 Q. Okay. 14 A. Okay. Do you want me to open these 15 now, or are these -- 16 Q. Yeah. Well, keep these two open. 17 So if you can open that one. 18 A. Which one? 19 Q. 674. 20 A. Okay. It's open. 21 Q. And Plaintiffs' Exhibit 674 is your 22 July 9, 2024 expert rebuttal report, correct?</p>	<p style="text-align: right;">Page 19</p> <p>1 other -- has Mr. Kachouroff retained you in 2 other cases other than this one? 3 A. No. No. 4 Q. When were you formally retained in 5 this matter. 6 A. I think it was in June -- May or 7 June. I can't remember exactly when. I think 8 May or June. 9 Q. And you were retained by both 10 Michael Lindell and My Pillow, correct? 11 A. That's right. 12 Q. Prior to being retained in this 13 matter, you knew Mr. Lindell, correct? 14 A. Yes, I did. 15 Q. You had communicated with Mr. 16 Lindell prior to retention in this case, 17 correct? 18 A. Yeah. But not on this case, though. 19 I don't think I have talked with him about this 20 case. 21 Q. You had notified Mr. Lindell -- 22 started communication about upcoming President</p>
<p style="text-align: right;">Page 18</p> <p>1 A. Yes, it is. 2 Q. And if you could go to Page 22 of 3 your report. 4 A. I'm there. 5 Q. Is that your signature? 6 A. It is. 7 Q. And is all the information in your 8 July 9 report true and correct to the best of 9 your knowledge? 10 A. Yes. 11 Q. When were you first contacted about 12 potentially serving as an expert in this case? 13 A. Wow. I think April maybe, April 14 2024. 15 Q. Who contacted you? 16 A. Chris Kachouroff. 17 Q. Have you previously worked with Mr. 18 Kachouroff prior to this case. 19 A. Not in a -- not in a -- I'm not sure 20 actually. I'm not sure. I -- I -- not on this 21 matter certainly. 22 Q. Well, I know, but I mean, in</p>	<p style="text-align: right;">Page 20</p> <p>1 Trump rallies, correct? 2 A. I don't -- I don't recall. 3 Q. You had asked Mr. Lindell for his 4 support of an Arizona congressional candidate 5 Kathy Winn, correct? 6 A. Yes. Yes, I did. That's right. 7 MR. LETKEWICZ: If you could put Tab 8 13 in the chat, and this will be marked as 9 Plaintiffs' Exhibit 675. 10 (Deposition Exhibit 675 was marked 11 for identification.) 12 BY MR. LETKEWICZ: 13 Q. And let me know when you have it 14 open, Mr. Bowes. 15 A. Okay. I have it open. 16 Q. Okay. So this has been produced by 17 defendants and Bates-stamped DEF079498, and if 18 we start at the top here, it begins: "Hi, 19 Mike. Robert Bowes here from Trump admin, 20 White House Policy Advisor, and HUD/FHA. Hope 21 to see you in Anchorage." 22 Do you see that?</p>

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<p style="text-align: right;">Page 21</p> <p>1 A. I do see that, yes.</p> <p>2 Q. And that was a text -- this is a</p> <p>3 text you sent to Mr. Lindell, correct?</p> <p>4 A. I -- that sounds right. It's</p> <p>5 probably a text.</p> <p>6 Q. And this text is dated July 6th of</p> <p>7 '22?</p> <p>8 A. I assume that's correct.</p> <p>9 Q. Do you recall how you received Mr.</p> <p>10 Lindell's phone number?</p> <p>11 A. I do not.</p> <p>12 Q. If you go a couple of paragraphs</p> <p>13 down, it says: "I highly recommend Kathleen</p> <p>14 Winn for congress running in Arizona 6th."</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. And then in the next paragraph, it</p> <p>18 says: "Kathleen Winn is the right choice for</p> <p>19 congress. She has my full support. She was on</p> <p>20 the forefront of fighting for election</p> <p>21 integrity and uncovering fraud."</p> <p>22 Do you see that?</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. And Mr. Lindell responds: "I give</p> <p>2 her my full endorsement," correct?</p> <p>3 A. I see that.</p> <p>4 Q. Did Ms. Winn win her election in</p> <p>5 2022?</p> <p>6 A. No.</p> <p>7 Q. You can go to Page 4. About middle</p> <p>8 of the page, there is a text from you on August</p> <p>9 22, 2022 where you write: "CVR hand delivered</p> <p>10 to Arlington County, Virginia today. Thank you</p> <p>11 for the great summit," correct?</p> <p>12 A. I see that.</p> <p>13 Q. What are you referring to by "CVR</p> <p>14 hand delivered to Arlington County, Virginia"?</p> <p>15 A. Cast vote record. I walked it in</p> <p>16 and handed it to the clerk of the Arlington</p> <p>17 County elections department.</p> <p>18 Q. What is cast vote records?</p> <p>19 A. It's the -- it's the record that is</p> <p>20 produced from -- from voting. It is -- it's</p> <p>21 the electronic record of the number of votes,</p> <p>22 for whom individuals voted.</p>
<p style="text-align: right;">Page 22</p> <p>1 A. I do.</p> <p>2 Q. Okay. And if you can go to the next</p> <p>3 page at the top, you text Mr. Lindell on July</p> <p>4 11th of '22: "Trump Arizona rally this</p> <p>5 weekend," correct?</p> <p>6 A. I -- yes.</p> <p>7 Q. Okay. And then a couple of texts</p> <p>8 down, you write: "Not yet on official DJT site</p> <p>9 but soon. Please endorse Kathleen Winn,</p> <p>10 Arizona 6th, over the Ducey hack Juan" -- I'm</p> <p>11 probably going to mispronounce this guy's</p> <p>12 name -- "Ciscomani. Great to see you in</p> <p>13 Anchorage."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And you had seen Mr. Lindell in</p> <p>17 Anchorage, Alaska, correct?</p> <p>18 A. That's right. Yes.</p> <p>19 Q. And then on the next page, there is</p> <p>20 a photo with the text: "Kari Lake endorses</p> <p>21 Kathleen Winn, congress," correct?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 24</p> <p>1 It's -- it's a request -- this was a</p> <p>2 request to -- to receive the cast vote record</p> <p>3 from Arlington County.</p> <p>4 Q. And why were you requesting the cast</p> <p>5 vote records from Arlington, Virginia?</p> <p>6 A. To compare those to the reported</p> <p>7 results.</p> <p>8 Q. And why did you want to do that?</p> <p>9 A. To see if there were any gaps.</p> <p>10 Q. And was this part of any type of</p> <p>11 investigation you were doing into election</p> <p>12 fraud?</p> <p>13 A. Yes. Just -- just my normal</p> <p>14 curiosity about Arlington County. It wasn't a</p> <p>15 main focus, but we wanted to -- I wanted to see</p> <p>16 if there were any gaps between the CVR and the</p> <p>17 reported results.</p> <p>18 Q. And what -- and you also refer to in</p> <p>19 your text to the great summit. Do you recall</p> <p>20 what summit you are referring to?</p> <p>21 A. I don't remember what summit it was.</p> <p>22 It -- there are lots of summits.</p>

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<p style="text-align: right;">Page 25</p> <p>1 Q. Okay. Was this a summit put on by</p> <p>2 Mr. Lindell?</p> <p>3 A. I don't know. He was in it, I</p> <p>4 think.</p> <p>5 Q. Was this a summit relating to</p> <p>6 election fraud?</p> <p>7 A. Oh, yeah. I'm sure. Many of them</p> <p>8 were.</p> <p>9 Q. You are aware that Mr. Lindell has a</p> <p>10 website called FrankSpeech, correct?</p> <p>11 A. I have heard of that.</p> <p>12 Q. You have appeared on shows that are</p> <p>13 on FrankSpeech, correct?</p> <p>14 A. Probably one. I don't know -- I</p> <p>15 don't know what they rebroadcast. I think I</p> <p>16 was on one show directly, but I don't know what</p> <p>17 they rebroadcast from other -- other sources.</p> <p>18 Q. And which one was that?</p> <p>19 A. Oh, wow. Probably one from two or</p> <p>20 three months ago related to Wisconsin.</p> <p>21 Q. Do you recall whose show that was?</p> <p>22 A. I think it was Conrad Reynolds as</p>	<p style="text-align: right;">Page 27</p> <p>1 remember exactly.</p> <p>2 Q. You referenced White House advance.</p> <p>3 What is White House advance?</p> <p>4 A. Oh, it's a group of people who are</p> <p>5 the official representatives of the president</p> <p>6 in -- in setting up the -- any -- any events</p> <p>7 that the president participates in. The</p> <p>8 advance team works closely with the Secret</p> <p>9 Service, with the site production, local law</p> <p>10 enforcement, media, the event -- people</p> <p>11 attending the event. They basically run -- run</p> <p>12 the events. So White House advance is the --</p> <p>13 is the -- you know, any administration has</p> <p>14 advance people that represent the president of</p> <p>15 the United States in setting up these events.</p> <p>16 Q. And at the time you met Mr. Lindell</p> <p>17 and prior to your retention in this case, how</p> <p>18 often did you speak with Mr. Lindell?</p> <p>19 A. Oh, very infrequently. Rarely.</p> <p>20 Q. Prior to your retention in this</p> <p>21 case, did you ever socialize with Mr. Lindell?</p> <p>22 A. I don't recall. I don't -- I don't</p>
<p style="text-align: right;">Page 26</p> <p>1 the host.</p> <p>2 Q. And what were you discussing</p> <p>3 concerning Wisconsin?</p> <p>4 A. I can't recall -- recall, but it was</p> <p>5 probably something about recalling the speaker</p> <p>6 of the house there. Might have been on Georgia</p> <p>7 election fraud. I'm not sure exactly. There</p> <p>8 are lots of -- lots of things on this.</p> <p>9 Q. Do you know when you first met Mr.</p> <p>10 Lindell?</p> <p>11 A. Probably early 2022.</p> <p>12 Q. How did you meet Mr. Lindell?</p> <p>13 A. Oh, maybe at a -- I -- I -- the one</p> <p>14 I remember is I did meet him -- speak with him</p> <p>15 at a -- I guess probably a Trump rally.</p> <p>16 Q. And --</p> <p>17 A. Might -- actually, it might have</p> <p>18 been in 2020 because there were -- I was White</p> <p>19 House advance and doing -- you know, setting up</p> <p>20 events when I was in the administration. It</p> <p>21 was sort of a side thing for me, and I may have</p> <p>22 met him in 2020. I -- I just don't -- I don't</p>	<p style="text-align: right;">Page 28</p> <p>1 think anything socially.</p> <p>2 Q. Why did you decide to work on this</p> <p>3 matter?</p> <p>4 A. So I heard -- I heard that Gorowsky</p> <p>5 was resigning or wanted to be substituted, and</p> <p>6 then -- and Chris Kachouroff knew that I had</p> <p>7 financial expertise, had been an expert, and he</p> <p>8 contacted me.</p> <p>9 So I thought this is -- this sounds</p> <p>10 good, and I looked into it, and it's -- seems</p> <p>11 to be a really easy case.</p> <p>12 Q. And why do you say it's an easy</p> <p>13 case?</p> <p>14 A. The -- the evidence -- financial --</p> <p>15 financial evidence is pretty finite, and it --</p> <p>16 it tells a -- it tells a really clean picture.</p> <p>17 Q. What is that clean picture?</p> <p>18 A. Wow. That -- I guess I refer you to</p> <p>19 my -- my -- my expert report because it would</p> <p>20 take a long time to go through it.</p> <p>21 But the clean picture is that --</p> <p>22 that Smartmatic USA was struggling and that</p>

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<p style="text-align: right;">Page 29</p> <p>1 they -- that entity was just having very -- a 2 lot of difficulty getting off the ground, even 3 before 2020. 4 And then it just shows clearly in 5 the -- in the financial statements, it shows 6 that in the audit report, it shows that in the 7 e-mails records later -- that I looked at later 8 that they were -- they were struggling. 9 So that part is really an easy story 10 to tell, and I know people can -- can try to 11 get it wrong and try to make it seem to be 12 something different than it is, but in my mind, 13 it's pretty -- a pretty simple story. 14 Q. You're aware that Mr. Lindell is 15 involved in litigation against Dominion and a 16 former Dominion employee, Eric Coomer, correct? 17 A. I am not -- I am not -- I think I 18 know that Dominion sued Mike Lindell, but I 19 don't know anything about the Coomer or -- I 20 don't know all the details of that. 21 Q. So you have not been retained as an 22 expert in either one of those cases?</p>	<p style="text-align: right;">Page 31</p> <p>1 A. I had one other attorney -- I am 2 drawing a blank on his name. He -- he sent me 3 some pointers on the -- the structure of 4 the adoption report. 5 Q. And was that Mr. Lindell's prior 6 counsel Parker Daniels? 7 A. No. No. 8 Q. And when you're referring to the 9 structure of the adoption, I assume you're 10 referring to Mr. Gorowsky's report, correct? 11 A. Right. Yes. To adopt -- to adopt 12 that report and just -- just the -- the things 13 that were needed, you know, to basically 14 provide details on what -- what the -- what I 15 was adopting and -- yes. 16 Q. And you don't recall who this 17 attorney was? 18 A. I don't. I would have to look it 19 up. I can't remember his name. 20 Q. What work have you done in 21 connection with this matter? 22 A. Financial analysis.</p>
<p style="text-align: right;">Page 30</p> <p>1 A. I have not. 2 Q. Okay. So going to your July 9 3 report, did anyone assist you in putting 4 together your report? 5 A. So my lawyer sent me stuff to look 6 at. Does that count as assistance? I mean, I 7 was, like -- you know, navigating all the 8 discovery, I needed assistance with that, so 9 just to find -- find everything. It was just 10 sort of blasted out in various forms. Counsel, 11 of course -- of course they advised me where -- 12 where to find things to look at. So I guess I 13 got some assistance that way. 14 And then -- 15 Q. And by "counsel," you're -- 16 A. Go ahead. 17 Q. And by "counsel," you're referring 18 to Mr. Kachouroff, correct? 19 A. Yeah. 20 Q. But other than Mr. Kachouroff 21 helping you locate documents, did anyone assist 22 you in putting together your report?</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Okay. What -- 2 A. Reading the discovery. 3 Q. And what -- and so what do you 4 mean -- so what discover did you read? 5 A. Well, I can start with those that I 6 specifically refer to in my -- my report. 7 Those were -- the Bates stamps were listed, so 8 definitely looked at all those. 9 But -- but in general, it was any of 10 the financial -- the annual reports, financial 11 statements for the three Smartmatic entities -- 12 SGO, Smartmatic International, and Smartmatic 13 USA -- from the periods from maybe 2016 through 14 whenever the most recent financial statements 15 were produced. In some cases that was 2021, 16 2022, or maybe just recently 2023 for 17 Smartmatic USA. I just got that. And that -- 18 that 2023 financial statement in its kind of -- 19 a brief -- brief form, I did not have that to 20 include in my July 9th report. 21 MR. LETKEWICZ: I apologize. There 22 is a siren going off. Can we just go off the</p>

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<p style="text-align: right;">Page 33</p> <p>1 record for 30 seconds while -- so we don't have 2 to listen to that. 3 THE VIDEOGRAPHER: We are going off 4 the record. 10 a.m. 5 (Pause.) 6 THE VIDEOGRAPHER: We are back on 7 the record. 8 BY MR. LETKEWICZ: 9 Q. So in addition to reviewing the 10 discovery that you just referenced in your 11 prior answer, did you review any deposition 12 transcripts from this litigation? 13 A. Yes, I did. Several. 14 Q. Do you recall which deposition 15 transcripts you reviewed? 16 A. I -- I don't at this time. 17 Q. Okay. Would you say -- was it more 18 than five? More than ten? A rough estimate of 19 how many deposition transcripts you think you 20 looked at. 21 A. Oh, half a dozen, something like 22 that. And then I also looked at the -- all the</p>	<p style="text-align: right;">Page 35</p> <p>1 report; is that correct? 2 A. It's -- it's really doing the -- 3 conducting the financial analysis. That was 4 probably the biggest part of it, but then yes, 5 preparing the report is the -- another big part 6 of it. 7 Q. So let's break that down. 8 How much time do you think you spent 9 on the financial analysis? 10 A. It all -- it all blends together, so 11 I don't think there is a -- a very real clear 12 attribution among the times. So -- but I 13 just -- maybe one-third, one-third, one-third, 14 you know. 15 Q. Got you. So 15 to 20 hours 16 reviewing discovery, 15 to 20 hours of -- well, 17 15, 20 hours financial analysis, and then the 18 rest doing the expert report? 19 A. Something like that, yes. 20 Q. How much have you billed to date in 21 this matter in terms of the amount of money? 22 A. To date -- well, I guess as of the</p>
<p style="text-align: right;">Page 34</p> <p>1 plaintiffs' expert reports. That was, like, a 2 half a dozen or so of those too. 3 Q. Okay. And approximately how many 4 hours have you spent on this matter? 5 A. Since -- since retention probably 6 40, maybe 50. 7 Q. Of those 40 to 50 hours, how much of 8 that was spent on reviewing the discovery and 9 depositions and expert reports that you 10 referenced in your prior answers? 11 A. Maybe one-third the time. 12 Q. So that is probably -- 13 A. I don't know. 15, 20 hours. 14 Q. -- 20 hours or so? 15 A. Yeah. Yep. Sounds right. I mean, 16 it all blends together. You -- you have to 17 refer back to them after looking at the 18 financials. There is no -- there is no exact, 19 crisp answer on that. Just in ballpark terms, 20 you know, maybe a third of the time. 21 Q. And so the rest of the time would 22 have been spent on preparing your July 9</p>	<p style="text-align: right;">Page 36</p> <p>1 last one maybe a few weeks ago, it would have 2 been almost \$19,000. 3 Q. How much have you been paid to date? 4 A. I received a retainer for 25,000. 5 Q. So in reviewing your July 9 report, 6 I did not see a documents considered list. 7 Have you prepared a documents considered list 8 in connection with your July 9 report? 9 A. I have not. 10 Q. And -- 11 A. I wrote there what I had looked at. 12 Obviously, the Gorowsky report was -- was a 13 core part of that, but then drilling into the 14 recent -- more recent financial statements, 15 those were listed as -- as being a part of my 16 consideration and report. 17 Q. Approximately how many documents did 18 you review in connection with preparing your 19 report and your financial analysis in this 20 case? 21 A. I -- I don't think I can put a 22 number on it. I mean, it's dozens and dozens.</p>

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<p style="text-align: right;">Page 37</p> <p>1 I don't know. But the -- the -- when you think 2 of a document -- I also looked at a lot of 3 e-mails, and that was dozens and dozens just of 4 those. So internal e-mails, internal strategic 5 reports. I don't know. It's -- it's hard to 6 put a number on it. 7 Q. Over a hundred? 8 A. There are hundreds that -- that were 9 produced, so I have not looked at every one. 10 Q. So you received -- let me back up 11 here. So I just want to focus in on what you 12 actually looked at. 13 So -- but you would estimate you 14 looked at at least a hundred documents, 15 correct? 16 A. Probably less than a hundred. 17 Probably between 80 and 100. I don't know. 18 Something like that. But if you define 19 document as e-mail, an internal e-mail, then 20 that alone is dozens and dozens so... 21 Q. So you indicated in your prior 22 testimony in the last few minutes that you</p>	<p style="text-align: right;">Page 39</p> <p>1 A. Yes, it was. Definitely. 2 Q. Did you review any other 3 interrogatories or written discovery responses 4 from Smartmatic? 5 A. I don't -- I think so, but I don't 6 recall which ones. 7 Q. Do you recall how many Smartmatic 8 written discovery responses you would have 9 reviewed outside of the six supplemental 10 answers? 11 A. A handful, I guess, just in general. 12 Q. How did you determine which 13 documents to review? 14 A. So that's a great -- a great 15 question. So with my -- my financial analysis 16 training from Chase Manhattan Bank was really 17 just to treat this just like any other deal 18 that I've done and -- and look at it from 19 financial condition of the -- of the company -- 20 companies. 21 And so I just focused in on -- on 22 their own historical financial statements and</p>
<p style="text-align: right;">Page 38</p> <p>1 reviewed Smartmatic internal e-mails, 2 Smartmatic USA, Smartmatic B.V. and SGO 3 financial statements, the Smartmatic expert 4 reports, and some deposition transcripts. 5 Were there any other documents that 6 you reviewed that you recall? 7 A. I think there were some -- like, a 8 restructuring plan, a strategic plan, mark- -- 9 you know, there were some documents that showed 10 what kind of markets collectively Smartmatic 11 was pursuing and what their status was. But 12 those -- those categories you described are 13 generally the main ones. Excuse me. 14 Q. Did you review any of Smartmatic's 15 written discovery responses? 16 A. As in -- I -- I did -- yes. I 17 looked at their interrogatory responses. 18 Q. Okay. Did you -- was -- was -- was 19 one of the interrogatory responses you reviewed 20 Smartmatic's Six Supplemental Answers and 21 Objections to Defendant My Pillow, Inc.'s First 22 Set of Interrogatories?</p>	<p style="text-align: right;">Page 40</p> <p>1 disclosure, management notes, what the auditors 2 say. I have just been trained to do that. You 3 just zero in on -- on -- on the financial 4 condition first, and then you kind of build in 5 around, like, what's going on to try to gain 6 information on what the root cause of these -- 7 this performance is. So it's, you know, 8 historical financial analysis and to see what 9 the drivers are. 10 Q. You had indicated that you had 11 reviewed dozens of Smartmatic internal e-mails. 12 How did you determine which Smartmatic internal 13 e-mails to look at? 14 A. Just -- I was just sifting through, 15 and then I found that there were some that were 16 dealing with bidding. It was sort of a just a 17 hunt and peck. Basically going through the 18 haystack and then finding -- finding a set that 19 were dealing with, you know, business 20 development that Smartmatic -- Smartmatic USA 21 were trying to -- trying to -- to do. 22 Q. You had indicated earlier that Mr.</p>

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<p style="text-align: right;">Page 41</p> <p>1 Lindell, My Pillow's counsel, Mr. Kachouroff, 2 provided you with some of the documents that 3 have been produced in this case, correct? 4 A. So they were all -- any that they 5 had were made available to me, and then just 6 getting the hierarchy -- Mr. Kachouroff 7 described to me the hierarchy where to find 8 this, as I think we had to, you know, use the 9 discovery system Egnyte. So it was sort of 10 orienting me to -- to what -- where they 11 were -- where they were in various folders. 12 And then once I knew the folders, I 13 would sort of go read them on my own and -- and 14 just see what was pertinent. 15 Q. Were these folders by topic, or how 16 were these folders organized? 17 A. I guess topic is the best thing, you 18 know. It's like who provided -- was it the 19 defendant or the plaintiff, or was there 20 responses or financial statements? So it 21 just -- yeah. There's a categorization that -- 22 that assisted me to look.</p>	<p style="text-align: right;">Page 43</p> <p>1 You know, I am doing -- I am a financial 2 expert. They weren't relevant, directly 3 relevant. So I just sort of discarded or 4 focused in on those that were the drivers of 5 the financial performance of the company. 6 Q. So I guess what I am getting at 7 is -- so putting aside the financial 8 statements, how did you -- you obviously did 9 not review -- based on your prior testimony, as 10 I understand it, you did not review all 1.2 11 million documents. So my -- my question is: 12 How did you, you know, identify the documents 13 to at least take a look at to see if it would 14 be relevant for your analysis? 15 A. I looked at those that were 16 classified -- came in related to financial 17 statements of the companies. I started with 18 those. 19 And then I also looked at the 20 responses, the depositions, the financial 21 expert -- the plaintiffs' financial expert 22 reports, the marketing experts. So it was just</p>
<p style="text-align: right;">Page 42</p> <p>1 Although -- although the way these 2 things were coming in, they didn't necessarily 3 fit into that. I guess the Smartmatic team 4 sort of just blasted them out everywhere, so 5 there was -- there was no organization to it. 6 Q. Did you conduct any type of word 7 search for particular documents? 8 A. I did not. 9 Q. Sir, are you aware that Smartmatic 10 has produced approximately 1.2 million 11 documents in this case? 12 A. I did not know the number. I knew 13 it was a lot. 14 Q. So how were you able to determine 15 the 80 to 100 internal documents to look at to 16 prepare your report? 17 A. So, again, I looked at the financial 18 statements first and kind of built out from 19 there things that directly related to that. 20 And many I saw -- categories is, like -- it was 21 just -- to me, it was just noise, frankly, just 22 not relevant, not relevant to my role at least.</p>	<p style="text-align: right;">Page 44</p> <p>1 building out. In -- in the limited time I had 2 I guess to -- to start with the core and then 3 build out from there. 4 Q. Did you receive any guidance or 5 assistance from counsel as to which internal 6 Smartmatic documents to take a look at? 7 A. I -- I was -- I was alerted that -- 8 that new discovery came in, like this 9 interrogatory responses. I was -- I was 10 alerted that those -- those should be looked 11 at. And it was just basically whatever -- 12 whatever new batches of what we found or you 13 guys sent over stuff. I was told that there 14 was a new batch or this is a particular one, 15 yes. 16 Q. And then in those new batches, did 17 you do word searches or did you look through 18 every single document that was in that new 19 batch? 20 A. I don't believe I looked at every 21 single document in the batch -- new batches, 22 but I did find -- you know, I found the ones I</p>

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<p style="text-align: right;">Page 45</p> <p>1 needed the most, and those were the more recent</p> <p>2 financial statements that -- that had not been</p> <p>3 produced to Gorowsky but now were made</p> <p>4 available.</p> <p>5 So they were -- and some -- some</p> <p>6 were the ones I remember -- you may know that I</p> <p>7 put in -- or we had a supplemental discovery</p> <p>8 request for items like 43, 44, 45, 46, 47, 48,</p> <p>9 49, and I was relating the -- this -- this --</p> <p>10 those that -- that appended or amended</p> <p>11 discovery requests were those that I felt --</p> <p>12 felt we needed that Gorowsky hadn't looked at.</p> <p>13 So I was looking for the ones I had already</p> <p>14 asked for basically.</p> <p>15 Q. So I'm going to ask a slightly</p> <p>16 different question.</p> <p>17 So you cite a number of Smartmatic</p> <p>18 internal e-mails in your July 9 report. So how</p> <p>19 did you go about locating those? So did you</p> <p>20 conduct searches? Did counsel direct you to</p> <p>21 those that would be the relevant ones to look</p> <p>22 at? Did you do something else? How did you go</p>	<p style="text-align: right;">Page 47</p> <p>1 kind of the core -- the core documents that</p> <p>2 were very helpful in -- in me coming up with my</p> <p>3 conclusions. Excuse me.</p> <p>4 Q. Now, you referenced earlier that you</p> <p>5 had -- as part of your review, you also</p> <p>6 reviewed expert reports that had been disclosed</p> <p>7 by Smartmatic, correct?</p> <p>8 A. Yes, that's right.</p> <p>9 Q. And one of those experts that</p> <p>10 Smartmatic has retained is Kevin Keller, Ph.D.,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Did you review Dr. Keller's</p> <p>14 September 22, '23 report?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall approximately how much</p> <p>17 time you spent reviewing his report?</p> <p>18 A. Maybe an hour, half an hour, hour.</p> <p>19 Q. Did you review any of the documents</p> <p>20 he listed in his documents considered list?</p> <p>21 A. I think so. I -- I can't recall</p> <p>22 specifically, but you know, if it was something</p>
<p style="text-align: right;">Page 46</p> <p>1 about identifying those?</p> <p>2 A. I did not do searches among them.</p> <p>3 So counsel told me there were batches coming</p> <p>4 in, so we just -- I looked at them, and he</p> <p>5 looked at them. And he said maybe this is what</p> <p>6 you're looking for, you know. So he just</p> <p>7 showed me what was available, and then I would</p> <p>8 do my own digging.</p> <p>9 Q. And when you say you were doing your</p> <p>10 own digging, does that mean you looked through</p> <p>11 each particular document?</p> <p>12 A. I may -- in some areas I looked</p> <p>13 through every document, yeah. I looked through</p> <p>14 note agreements, the e-mail -- lots of e-mails</p> <p>15 so...</p> <p>16 Q. And --</p> <p>17 A. I -- I was not -- if it's helpful, I</p> <p>18 was not restricted or -- in what I could look</p> <p>19 at. I was -- whatever was available or you</p> <p>20 guys made available to counsel, counsel made it</p> <p>21 available to me. I was not restricted in what</p> <p>22 I could look at. But I -- I ended up finding</p>	<p style="text-align: right;">Page 48</p> <p>1 that was relevant to my role in this, then I</p> <p>2 would -- I would tend to look at it. I can't</p> <p>3 remember what -- what he had put out. I think</p> <p>4 he was -- he seemed to be -- his -- his angle</p> <p>5 was -- was a marketing angle, I think, if I</p> <p>6 remember that right. So it wasn't directly</p> <p>7 financial analysis related. It was maybe more</p> <p>8 -- I don't remember which ones.</p> <p>9 Q. Did you review Dr. Keller's July 9,</p> <p>10 2024 report?</p> <p>11 A. I don't think -- no, I have never</p> <p>12 seen that. July 9th?</p> <p>13 Q. Yes.</p> <p>14 A. Send it to me. I would like to look</p> <p>15 at it, I guess, right.</p> <p>16 Q. We provided it to Mr. Lindell's</p> <p>17 counsel.</p> <p>18 A. Okay. Is it good? What's in it?</p> <p>19 Q. You'll have to read it to find out.</p> <p>20 A. Okay. Cat-and-mouse game here, huh?</p> <p>21 Q. You're also aware that Smartmatic</p> <p>22 retained Tammy Patrick, correct?</p>

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<p style="text-align: right;">Page 49</p> <p>1 A. Yes. Read her report as well.</p> <p>2 Q. And that was her September 22, 2023</p> <p>3 report?</p> <p>4 A. That's right.</p> <p>5 Q. And would it be similar to Dr.</p> <p>6 Keller's report, that you would have sent about</p> <p>7 30 minutes to 60 minutes reviewing her report?</p> <p>8 A. That's right.</p> <p>9 Q. Did you review the -- any of the</p> <p>10 documents listed in her documents considered</p> <p>11 list?</p> <p>12 A. I think I did in her case. Those, I</p> <p>13 think, were sort of election related maybe,</p> <p>14 less marketing related more election related,</p> <p>15 so yes.</p> <p>16 Q. Do you know how much time you spent</p> <p>17 reviewing those documents considered list?</p> <p>18 A. I don't remember. I just don't</p> <p>19 remember.</p> <p>20 Q. And you -- you're also aware that</p> <p>21 Smartmatic has retained Alan Sherman, Ph.D.,</p> <p>22 correct?</p>	<p style="text-align: right;">Page 51</p> <p>1 you would have spent 30 to 60 minutes reviewing</p> <p>2 his report?</p> <p>3 A. That's about right, yes.</p> <p>4 Q. Were you -- are -- strike that.</p> <p>5 Are you aware that Mr. Bania issued</p> <p>6 a July 9, 2024 report?</p> <p>7 A. I'm not aware of that. Is there</p> <p>8 one?</p> <p>9 Q. There is one.</p> <p>10 A. Okay. Why do they -- why do they</p> <p>11 all update their reports? What -- what was --</p> <p>12 what's -- what's new?</p> <p>13 Q. Again, you'll have to read it to</p> <p>14 find out because we're -- my question isn't</p> <p>15 about the content of the report right now.</p> <p>16 A. Okay.</p> <p>17 Q. You're aware that Smartmatic has</p> <p>18 retained John Berger, Ph.D., correct?</p> <p>19 A. Yes.</p> <p>20 Q. And did you review Dr. Berger's</p> <p>21 September 22, 2023 report?</p> <p>22 A. I did.</p>
<p style="text-align: right;">Page 50</p> <p>1 A. What's the last name?</p> <p>2 Q. Alan Sherman.</p> <p>3 A. Yes.</p> <p>4 Q. Did you review his September 22,</p> <p>5 2023 report?</p> <p>6 A. Yes, I did.</p> <p>7 Q. And you would have spent 30 to 60</p> <p>8 minutes reviewing that report?</p> <p>9 A. That's right.</p> <p>10 Q. Are you aware that Dr. Sherman</p> <p>11 issued a July 9, 2023 report?</p> <p>12 A. No.</p> <p>13 Q. So, obviously, you would not have</p> <p>14 reviewed that?</p> <p>15 A. Correct.</p> <p>16 Q. You are aware that Smartmatic has</p> <p>17 retained Doug Bania, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And did you review his September 22,</p> <p>20 2023 report?</p> <p>21 A. I did.</p> <p>22 Q. And, again, this would have bene --</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. And, again, you would have spent 30</p> <p>2 to 60 minutes reviewing that report?</p> <p>3 A. That's right.</p> <p>4 Q. Did you review the documents listed</p> <p>5 in his documents considered list?</p> <p>6 A. I don't remember.</p> <p>7 Q. You're aware that Smartmatic has</p> <p>8 retained Professor Christopher James, correct?</p> <p>9 A. I am.</p> <p>10 Q. Did you review Professor James's</p> <p>11 July 9, 2024 report?</p> <p>12 A. I did.</p> <p>13 Q. How much time did you spend</p> <p>14 reviewing his report?</p> <p>15 A. Maybe an hour, hour and a half.</p> <p>16 Q. Did you review any of the documents</p> <p>17 he cited in his footnotes or listed in his</p> <p>18 documents considered list?</p> <p>19 A. No, not yet. I may.</p> <p>20 Q. And you have not prepared a report</p> <p>21 responding to Professor James's July 9, 2024</p> <p>22 report, correct?</p>

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<p style="text-align: right;">Page 53</p> <p>1 A. Not yet.</p> <p>2 Q. All right. Let's go back to your</p> <p>3 July 9th report, and if you could go to Page 5</p> <p>4 and Paragraph 15, and let me know when you're</p> <p>5 there.</p> <p>6 A. I am there.</p> <p>7 Q. Okay. In the very last line, about</p> <p>8 halfway through it, you write: "Being actively</p> <p>9 involved in complex financial analysis" -- and</p> <p>10 it continues on the next page -- "in financial</p> <p>11 forecasting, mergers, and workouts since 1983,</p> <p>12 I was asked by attorneys for Mr. Lindell and My</p> <p>13 Pillow, Inc., to review the prior financial</p> <p>14 expert report of Mr. Don Gorowsky" to -- "and</p> <p>15 assess its reasonableness and accuracy. I</p> <p>16 found it reasonable and accurate in adopting</p> <p>17 Mr. Gorowsky's opinions in toto," correct?</p> <p>18 A. Yes.</p> <p>19 Q. Prior to this case, have you ever</p> <p>20 issued an expert report where you adopted the</p> <p>21 opinions of another expert?</p> <p>22 A. No.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. Did you review those -- any of those</p> <p>2 documents?</p> <p>3 A. Some, but not all. I don't -- I</p> <p>4 just don't remember which ones. I know I was</p> <p>5 looking at a lot of the My Pillow financials.</p> <p>6 I was looking at the Smartmatic financials,</p> <p>7 went back -- I was, again, focused on financial</p> <p>8 analysis.</p> <p>9 Q. Other than My Pillow financials and</p> <p>10 Smartmatic financials, do you recall any other</p> <p>11 documents that were cited in Mr. Gorowsky's</p> <p>12 footnotes that you reviewed?</p> <p>13 A. He had some professional</p> <p>14 certification and -- like, AICP -- you know,</p> <p>15 expert standards reports I looked at.</p> <p>16 Q. Actually, if you can -- let's go to</p> <p>17 Plaintiffs' Exhibit 673 for a moment, which is</p> <p>18 Mr. Gorowsky's report, and if you could go to</p> <p>19 Page 7.</p> <p>20 A. Okay. I'm there.</p> <p>21 Q. And do you see at the bottom there</p> <p>22 lists -- let's see here -- five bullets with</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. What work did you do to assess the</p> <p>2 reasonableness and accuracy of Mr. Gorowsky's</p> <p>3 report?</p> <p>4 A. Well, it was sort of -- it was an</p> <p>5 independent review of -- I -- I had read his</p> <p>6 and then wanted to conduct my own financial</p> <p>7 analysis to -- to compare against that and,</p> <p>8 after doing so, found his to be reasonable and</p> <p>9 accurate.</p> <p>10 Q. So you -- as part of -- so strike</p> <p>11 that.</p> <p>12 So you read his report. How much</p> <p>13 time did you spend reviewing Mr. Gorowsky's</p> <p>14 report?</p> <p>15 A. Oh, a couple hours.</p> <p>16 Q. And you're aware that -- sorry. I</p> <p>17 didn't mean to cut you off.</p> <p>18 A. That's okay. I completed it.</p> <p>19 Q. You're aware that Mr. Gorowsky has</p> <p>20 footnotes in his report that cite to different</p> <p>21 documents, correct?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 56</p> <p>1 different AICPA documents? Do you see that?</p> <p>2 A. Yes. I see those, yes.</p> <p>3 Q. Did you review each of those?</p> <p>4 A. Not -- I -- probably one or two.</p> <p>5 Q. Do you recall which ones you</p> <p>6 reviewed?</p> <p>7 A. I don't at this time. I don't -- I</p> <p>8 don't remember. I think I looked at the lost</p> <p>9 -- the lost profits one and the reasonable</p> <p>10 certainty of economic damages. I think I</p> <p>11 looked at those two.</p> <p>12 Q. Other than those two AICPA documents</p> <p>13 you just referenced, My Pillow financials,</p> <p>14 Smartmatic financials did you review any other</p> <p>15 documents that Mr. Gorowsky cited in his</p> <p>16 footnotes that you can recall?</p> <p>17 A. Did you list in there Smartmatic</p> <p>18 financials?</p> <p>19 Q. Yes, I did.</p> <p>20 A. Okay. Annual reports, appendices.</p> <p>21 Are you referring --</p> <p>22 Q. Appendices, where are you -- are you</p>

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<p style="text-align: right;">Page 57</p> <p>1 referring to appendices?</p> <p>2 A. Well, Gorowsky's, I -- I reviewed</p> <p>3 his appendices.</p> <p>4 Q. And Mr. Gorowsky, he has a documents</p> <p>5 considered list?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Did you review any of the documents</p> <p>8 listed in his documents considered list?</p> <p>9 A. I know I did, but I'd have to look</p> <p>10 at them right now, the documents -- so --</p> <p>11 Q. Yeah. But --</p> <p>12 A. -- some -- some yes, some no.</p> <p>13 Q. Do you remember which ones you</p> <p>14 reviewed?</p> <p>15 A. I don't -- I don't remember at this</p> <p>16 time. I know -- I have to go to the Bates</p> <p>17 stamps.</p> <p>18 Do you want to go through each one</p> <p>19 or -- or what? I mean, I --</p> <p>20 Q. Well, I mean, I was asking you: On</p> <p>21 that list do any of those look familiar to you</p> <p>22 as ones you would have reviewed?</p>	<p style="text-align: right;">Page 59</p> <p>1 numbers matched up. When he was referring to</p> <p>2 cash flows and income statements, I just</p> <p>3 proofed those out to make sure that he was --</p> <p>4 he was citing those correctly, and he did.</p> <p>5 Q. So when you're saying your own</p> <p>6 financial analysis, you are -- you mean your</p> <p>7 review of the three Smartmatic entities'</p> <p>8 financial statements, correct?</p> <p>9 A. Yes, to the extent I had them. You</p> <p>10 know, when he referred to the consolidated</p> <p>11 statements of -- of -- of the -- the parent</p> <p>12 company, that was, I think, the predominant</p> <p>13 source of his -- of his report. So I had</p> <p>14 those.</p> <p>15 But I -- again, I didn't have nor</p> <p>16 did he have a lot of drill down or any drill</p> <p>17 down on the Smartmatic USA financials. So that</p> <p>18 came in later after he had -- after September</p> <p>19 2023 the US- -- USA financials came in later.</p> <p>20 But for -- for what he had put in his report, I</p> <p>21 tried to match it up and did match it up with</p> <p>22 what he had written in his report when I</p>
<p style="text-align: right;">Page 58</p> <p>1 A. I can't remember the -- the Bates</p> <p>2 numbers. It's probably most of those. When he</p> <p>3 Bates labeled the documents, I probably looked</p> <p>4 at most of those.</p> <p>5 Q. And do you know --</p> <p>6 A. But -- I -- I was -- I was less</p> <p>7 concerned about, you know, the SGO 2013</p> <p>8 financials. I didn't go -- those were less</p> <p>9 relevant to me.</p> <p>10 Q. Do you know how Mr. Gorowsky</p> <p>11 selected the documents he listed in his</p> <p>12 documents considered list?</p> <p>13 A. I do not.</p> <p>14 Q. Did you ever speak with -- well,</p> <p>15 strike that.</p> <p>16 So you reviewed Mr. Gorowsky's</p> <p>17 report and looked at some of the documents he</p> <p>18 cited. Did you do any diligence to check the</p> <p>19 accuracy of his -- of the statements in his</p> <p>20 September 22, 2023 report?</p> <p>21 A. Yes, I did. And that's -- that was</p> <p>22 my own financial analysis to make sure the</p>	<p style="text-align: right;">Page 60</p> <p>1 compared it to the Smartmatic consolidated</p> <p>2 financials.</p> <p>3 Q. And other than looking at the</p> <p>4 Smartmatic financials statements, did you do</p> <p>5 any other verification of Mr. Gorowsky's work</p> <p>6 in his report?</p> <p>7 A. Yes.</p> <p>8 Q. And What was that?</p> <p>9 A. I looked at the auditor's opinions.</p> <p>10 And he did -- he did not write about the</p> <p>11 auditor's opinions, and I was very keen on --</p> <p>12 on -- on their disclosure of what they were</p> <p>13 auditing and the nature of their audit -- audit</p> <p>14 findings.</p> <p>15 Q. Other than the auditor's report and</p> <p>16 then the financial statements, did you review</p> <p>17 anything else to -- as part of your diligence</p> <p>18 in -- before adopting Mr. Gorowsky's report?</p> <p>19 A. I guess I'd have to send you back to</p> <p>20 my response about all the work I conducted, and</p> <p>21 I -- I guess you can't -- you can't</p> <p>22 compartmentalize it into -- in what work went</p>

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<p style="text-align: right;">Page 61</p> <p>1 towards what review for Gorowsky's report and</p> <p>2 what report came into the development of my</p> <p>3 work and option.</p> <p>4 One -- one category of documents</p> <p>5 that I looked at that were not looked at by</p> <p>6 Gorowsky -- I don't -- I don't think he looked</p> <p>7 at them -- were these internal e-mails. They</p> <p>8 were very telling, and I'm not sure he even had</p> <p>9 them. He may not have had them at the time.</p> <p>10 So -- but there were -- there were sets of</p> <p>11 documents that came in maybe subsequent to his</p> <p>12 report that did help me in -- in producing my</p> <p>13 -- my adoption of his report.</p> <p>14 Q. You don't know one way or the other</p> <p>15 whether or not Mr. Gorowsky had access to those</p> <p>16 internal e-mails, correct?</p> <p>17 A. So all I can tell is he didn't -- he</p> <p>18 didn't write about them, and I -- I think had</p> <p>19 he looked at them, he would have written about</p> <p>20 them. So it leads me to believe he didn't look</p> <p>21 at the internal e-mails. They're so -- they're</p> <p>22 so stunning so I think -- I think that he</p>	<p style="text-align: right;">Page 63</p> <p>1 him --</p> <p>2 Q. Have you ever spoken -- have you</p> <p>3 ever spoken to Mr. Gorowsky?</p> <p>4 A. No.</p> <p>5 Q. All right. You understand that Mr.</p> <p>6 Lindell has retained other experts, in addition</p> <p>7 to yourself, in this case, correct?</p> <p>8 A. Yes, I am aware of that.</p> <p>9 Q. Did you rely on any of those experts</p> <p>10 in forming your opinions in this case?</p> <p>11 A. No, I did not.</p> <p>12 Q. Did you ever speak to Ben Cotton</p> <p>13 about this case?</p> <p>14 A. No --</p> <p>15 Q. Did you ever --</p> <p>16 A. -- I have not.</p> <p>17 Q. Did you ever speak to Adam Enders</p> <p>18 about this case?</p> <p>19 A. No.</p> <p>20 Q. Did you ever speak to be Peter Kent</p> <p>21 about this case?</p> <p>22 A. No.</p>
<p style="text-align: right;">Page 62</p> <p>1 probably did not have the internal e-mails.</p> <p>2 Q. So you're speculating, sir, that he</p> <p>3 did not have the internal e-mails, correct?</p> <p>4 A. If he was doing his job, he would</p> <p>5 have written about them.</p> <p>6 Q. But, again, you -- you did not speak</p> <p>7 with Mr. Gorowsky --</p> <p>8 A. No, I did not.</p> <p>9 Q. -- and he did not tell you that he</p> <p>10 did not ask for Smartmatic internal e-mails,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. So that -- you are speculating that</p> <p>14 he did not have those internal e-mails,</p> <p>15 correct?</p> <p>16 A. I don't want to -- speculation. I</p> <p>17 think they're so -- again, I'll stick to my</p> <p>18 answer that had he looked at them, he would</p> <p>19 have written about them. They're just so --</p> <p>20 they're just so in your face, bold.</p> <p>21 Q. Have you ever met Mr. Gorowsky?</p> <p>22 A. Nope. Never met him. Don't know</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Switch gears.</p> <p>2 What did you do to prepare for your</p> <p>3 deposition today?</p> <p>4 A. Mostly looked at the more recent</p> <p>5 findings and discovery, like the Chris James</p> <p>6 report, Christopher James report, and just -- I</p> <p>7 just reviewed my -- my own -- my own report of</p> <p>8 July 9th.</p> <p>9 Q. And did you meet with Mr. Kachouroff</p> <p>10 to prepare for your deposition today?</p> <p>11 A. We had a call yesterday just to --</p> <p>12 just to talk about logistics.</p> <p>13 Q. Other than talk about logistics, did</p> <p>14 you talk about any other topics?</p> <p>15 A. Yes. We -- we talked about the --</p> <p>16 my -- my desire to write a rebuttal report to</p> <p>17 the Chris -- Christopher James report.</p> <p>18 Q. Did you speak at all about your --</p> <p>19 the deposition you would give today other than</p> <p>20 logistics?</p> <p>21 A. Nothing -- nothing meaningful.</p> <p>22 Q. How much time would you estimate you</p>

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<p style="text-align: right;">Page 65</p> <p>1 spent preparing for this deposition today?</p> <p>2 A. Maybe two hours.</p> <p>3 MR. LETKEWICZ: We have been going a</p> <p>4 little over an hour, and this next line of</p> <p>5 questioning is going to take a little bit. So</p> <p>6 why don't we break for five, stretch our legs,</p> <p>7 and give the court reporter a break.</p> <p>8 THE WITNESS: Okay. Thank you.</p> <p>9 THE VIDEOGRAPHER: We are going off</p> <p>10 the record at 10:38 a.m.</p> <p>11 (A short recess was taken.)</p> <p>12 THE VIDEOGRAPHER: We are back on</p> <p>13 the record at 10:46 a.m.</p> <p>14 BY MR. LETKEWICZ:</p> <p>15 Q. One question that I had meant to ask</p> <p>16 you during -- before we took our break was one</p> <p>17 another question concerning Mr. Gorowsky.</p> <p>18 Do you know why Mr. Gorowsky decided</p> <p>19 to no longer be an expert in this case?</p> <p>20 A. I do not know.</p> <p>21 Q. Let's go to your background.</p> <p>22 You received a bachelor's degree in</p>	<p style="text-align: right;">Page 67</p> <p>1 program there, and then went to Chase to their</p> <p>2 credit training program as well.</p> <p>3 Q. And what work -- I'll strike that.</p> <p>4 What regional bank in Indiana did</p> <p>5 you work for?</p> <p>6 A. Indiana National Bank.</p> <p>7 Q. And what work did you do at Indiana</p> <p>8 National Bank?</p> <p>9 A. Some mergers, like the -- the</p> <p>10 Steinway Piano management buyout from CBS, the</p> <p>11 Gibson Guitars, just a bunch -- bunch of little</p> <p>12 deals.</p> <p>13 Q. And then after working at Indiana</p> <p>14 National Bank, you then went to Chase Manhattan</p> <p>15 Bank, correct?</p> <p>16 A. That's right. Yes.</p> <p>17 Q. And you provided merger and</p> <p>18 corporate finance structuring advice and</p> <p>19 litigation support to Chase insurance and</p> <p>20 mutual fund clients, correct?</p> <p>21 A. Correct.</p> <p>22 Q. You worked at Chase for about seven</p>
<p style="text-align: right;">Page 66</p> <p>1 finance from Indiana University in 1983,</p> <p>2 correct?</p> <p>3 A. That's right, yes.</p> <p>4 Q. You do not have an accounting</p> <p>5 degree, correct?</p> <p>6 A. Correct.</p> <p>7 Q. You do not have any economics</p> <p>8 degree, correct?</p> <p>9 A. I was -- I also had a -- an econ</p> <p>10 degree at Indiana.</p> <p>11 Q. Was that a major or a minor?</p> <p>12 A. Minor.</p> <p>13 Q. Okay. You do not have any graduate</p> <p>14 degree, correct?</p> <p>15 A. Correct.</p> <p>16 Q. So of course then, you don't have a</p> <p>17 Ph.D., correct?</p> <p>18 A. Correct.</p> <p>19 Q. And after graduating in Indiana, you</p> <p>20 worked at Chase Manhattan Bank, correct?</p> <p>21 A. It was a -- a regional bank, Indiana</p> <p>22 National, for a year and credit training</p>	<p style="text-align: right;">Page 68</p> <p>1 years, correct?</p> <p>2 A. Yeah. That's about right. That was</p> <p>3 -- yes. Yeah.</p> <p>4 Q. You then went to work for the Fund</p> <p>5 Commission Services, correct?</p> <p>6 A. Right.</p> <p>7 Q. What is Fund Commission Services?</p> <p>8 A. It was a corporate finance entity</p> <p>9 that financed the distribution of mutual fund</p> <p>10 shares. So it was like a -- like a specialized</p> <p>11 securitization company that dealt with</p> <p>12 financial institutions.</p> <p>13 Q. What did you do at Fund Commission</p> <p>14 Services?</p> <p>15 A. I was the president of that company,</p> <p>16 and we structured unique securitizations for</p> <p>17 the sale of mutual fund shares. We -- we</p> <p>18 basically factored the commissions. The sales</p> <p>19 commissions attendant with certain mutual</p> <p>20 funds, we factored them and financed them.</p> <p>21 Q. You worked at Fund Commission</p> <p>22 Services for about five years, correct?</p>

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<p style="text-align: right;">Page 69</p> <p>1 A. Yes, but it was in runoff mode where 2 we -- it was only active for, like, a couple of 3 years, and then it was, like, runoff mode for a 4 few. 5 Q. Was this a company that you founded? 6 A. Me and a partner, yes. 7 Q. And who was your partner? 8 A. John Mayo-Smith. 9 Q. And then after working at Fund 10 Commission Services for about five years, you 11 then went to work for Hovde Capital, LLC? 12 A. Yes. Hovde. 13 Q. Hovde. What was Hovde Capital? 14 A. It had two parts. It would do -- it 15 did bank mergers, and it also had an investment 16 fund. And I was a -- I was the CFO of that 17 operation, including CFO of a bank, a savings 18 and loan, and -- and the -- the Hovde capital 19 itself. 20 Q. Was this a company that you founded? 21 A. No. I was an employee. I was -- I 22 was basically doing all the internal and</p>	<p style="text-align: right;">Page 71</p> <p>1 A. A -- a founder, you know, small 2 company, lots of hats, so accounting, 3 investment -- investor relations, financial 4 reporting, choosing the investments. I was an 5 investment manager. 6 Q. Do you recall the amount of assets 7 under Bowes Bank's management during your 8 tenure there? 9 A. It was like two million. 10 Q. And you were working at Bowes Bank 11 for a little over a year, correct? 12 A. That's right. 13 Q. And why did you stop working at 14 Bowes Bank? 15 A. The overall market was not -- we -- 16 we did not get the -- the volume of business at 17 the time. So we -- we didn't have the scale of 18 operations to continue. So we returned 19 everybody's share -- we returned everybody's 20 money. 21 Q. And after that you went to work at 22 Fannie Mae, correct?</p>
<p style="text-align: right;">Page 70</p> <p>1 external financial reporting. 2 Q. You were at Hovde Capital for about 3 a year, correct? 4 A. That's right. 5 Q. And then you went to work at Bowes 6 Bank and Insurance Fund, correct? 7 A. That's right. 8 Q. And was this your bank? 9 A. It was a -- a registered mutual 10 fund, and we had shareholders, SEC registered, 11 regulated. We sold no-load mutual fund shares. 12 Q. And were those mutual fund shares in 13 financial services stocks? 14 A. Well, they were shares of the funds 15 itself, and then the fund invested in bank and 16 insurance stocks. So it was an equity -- it 17 was an equity mutual fund, yes. 18 Q. Other than selling no-load mutual 19 funds shares, did Bowes Bank have any other 20 business? 21 A. No, that was it. 22 Q. And what did you do at Bowes Bank?</p>	<p style="text-align: right;">Page 72</p> <p>1 A. Yes. 2001. 2 Q. Fannie Mae is a provider of mortgage 3 financing, correct? 4 A. Yes, that is. 5 Q. You worked at Fannie Mae for about 6 12 years until 2014, correct? 7 A. Yeah. About 13-plus years, yes. 8 Q. Where did you go to work after 9 Fannie Mae? 10 A. I was an employee of the Donald 11 Trump campaign. 12 Q. And you were a field director in the 13 president -- or Donald Trump's campaign, 14 correct? 15 A. Correct. 16 Q. And when did you start that 17 position? 18 A. January of 2016. 19 Q. According to your CV, I believe you 20 indicated in your testimony a short time ago 21 you stopped working at Fannie Mae in January of 22 2014, correct?</p>

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<p style="text-align: right;">Page 73</p> <p>1 A. Right.</p> <p>2 Q. So what were you doing in those two</p> <p>3 years between leaving Fannie Mae and becoming a</p> <p>4 field director for Donald Trump's campaign?</p> <p>5 A. I wasn't working.</p> <p>6 Q. What were you -- what were your</p> <p>7 responsibilities as a field director for Donald</p> <p>8 Trump's campaign?</p> <p>9 A. Persuading voters, putting on</p> <p>10 events, organizing staff, getting volunteers.</p> <p>11 That's pretty much it.</p> <p>12 Q. Let's go back to a moment ago.</p> <p>13 Why did you leave Fannie Mae in</p> <p>14 January of '14?</p> <p>15 A. I was a whistleblower on a</p> <p>16 half-a-billion-dollar fraud, an internal fraud,</p> <p>17 and it was -- it became a subject of</p> <p>18 litigation, and -- and the official settlement</p> <p>19 was I resigned.</p> <p>20 Q. And when was that official -- well,</p> <p>21 strike that.</p> <p>22 When -- when did that litigation</p>	<p style="text-align: right;">Page 75</p> <p>1 on what's called the strike team, and we would</p> <p>2 go in and set up operations and hire state</p> <p>3 directors and run them. And, you know, it was</p> <p>4 basically prepare for each primary in the</p> <p>5 early -- in the early primary states, and then</p> <p>6 I was in Pennsylvania for the -- like, the last</p> <p>7 three or four months of the 2016 general</p> <p>8 election.</p> <p>9 Q. Were there other field directors</p> <p>10 that were working on the campaign that were</p> <p>11 essentially on the same level as you were?</p> <p>12 A. Several.</p> <p>13 Q. After -- strike that.</p> <p>14 And you held this role through the</p> <p>15 2016 election, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you were then appointed by</p> <p>18 President Trump to work at the U.S. Housing and</p> <p>19 Urban Development as senior advisor, correct?</p> <p>20 A. That's right.</p> <p>21 Q. How did you obtain the position of</p> <p>22 field director for Donald Trump's presidential</p>
<p style="text-align: right;">Page 74</p> <p>1 begin?</p> <p>2 A. February of 2014.</p> <p>3 Q. And then when did the matter settle?</p> <p>4 A. Maybe two or three months after</p> <p>5 that.</p> <p>6 Q. And was this litigation that was</p> <p>7 filed in court?</p> <p>8 A. I think it went to arbitration, so</p> <p>9 not -- no court yet.</p> <p>10 Q. Do you know which arbitration</p> <p>11 organization it went to?</p> <p>12 A. I think it was JAMS. Some federal</p> <p>13 judge, I can't remember her name. She -- she</p> <p>14 heard the -- heard the case, if you will, in</p> <p>15 arbitration.</p> <p>16 Q. And as a field director, were you</p> <p>17 responsible for a particular region? Was it</p> <p>18 the entire country? Kind of what was your --</p> <p>19 kind of from a geographical perspective, what</p> <p>20 was your scope of responsibilities?</p> <p>21 A. The entire country. Our focus was</p> <p>22 on the -- on the battle ground states, so I was</p>	<p style="text-align: right;">Page 76</p> <p>1 campaign in 2016?</p> <p>2 A. I sent an e-mail to the campaign</p> <p>3 manager.</p> <p>4 Q. Who was the campaign manager?</p> <p>5 A. Corey Lewandowski.</p> <p>6 Q. Did you know Mr. Lewandowski</p> <p>7 previously?</p> <p>8 A. I did not know him previously.</p> <p>9 Q. And this appointment to HUD, was</p> <p>10 this something that was subject to senate</p> <p>11 confirmation?</p> <p>12 A. No, it was not.</p> <p>13 Q. In your role as a senior advisor,</p> <p>14 you advised the secretary of HUD on housing,</p> <p>15 housing finance, and homelessness policy</p> <p>16 matters, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And you held that role from January</p> <p>19 2017 to August 2020, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Who did you report to at HUD?</p> <p>22 A. Secretary Ben Carson.</p>

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<p style="text-align: right;">Page 77</p> <p>1 Q. Outside of reporting to Secretary 2 Ben Carson, did you meet with anyone else in 3 the Trump administration in your role as senior 4 advisor of HUD? 5 A. Oh, yeah. Many, many people. There 6 were dozens of political appointees at HUD, and 7 sometimes we would interact with folks in 8 other -- other parts of the -- like, the 9 National Economic Council, from other agencies 10 like the VA, the USDA, small business. Yeah, 11 lots of other people. 12 Q. Did you ever meet with President 13 Trump in your role as senior advisor? 14 A. Not -- no. 15 Q. All right. And then after being at 16 HUD until August 2020, you then went to work at 17 the U.S. Office of Personnel Management as a 18 senior advisor, correct? 19 A. That's correct. 20 Q. And that was another political 21 appointment, correct? 22 A. That's right.</p>	<p style="text-align: right;">Page 79</p> <p>1 with anyone else in the Trump administration in 2 your role at the Office of Personnel 3 Management? 4 A. Yes. You know, probably a dozen 5 people were -- were -- I met with in that time 6 that were Trump -- Trump administration 7 officials. 8 Q. And was that in the Office of 9 Personnel Management? 10 A. Yes. 11 Q. And the reason why your role in the 12 Office of Personnel Management ended in January 13 of 2021 is because Joe Biden became president, 14 correct? 15 A. Correct. 16 Q. But you were nominated in 2020 to 17 serve as the commissioner of the Commodities 18 Future Trading Commission, correct? 19 A. Yes, and again in 2021. 20 Q. So you were nominated both in 2020 21 and 2021? 22 A. Correct.</p>
<p style="text-align: right;">Page 78</p> <p>1 Q. And was this -- and this was an 2 appointment by President Trump, correct? 3 A. That's right. 4 Q. Was this an appointment that 5 required senate confirmation? 6 A. No. 7 Q. And in your position as a senior 8 advisor, you advised the director of the Office 9 of Personnel Management on federal employee 10 health and insurance programs, correct? 11 A. That's right. 12 Q. And you held that position from 13 August 2020 until January 2021, correct? 14 A. Correct. 15 Q. Who did you report to in the Office 16 of Personnel Management? 17 A. It was the acting director Mike 18 Regis. 19 Q. Was he a political appointee of 20 President Trump? 21 A. Yes. 22 Q. Other than Mr. Regis, did you meet</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. You never became the commissioner of 2 the CFTC, correct? 3 A. Correct. 4 Q. Why did you never become the 5 commissioner of the CFTC? 6 A. The -- I did not get senate 7 confirmation. It was -- with a change of 8 administration, they -- folks involved in the 9 senate and the Biden administration let it 10 lapse. 11 Q. Was your nomination voted on in any 12 senate committee? 13 A. No. 14 Q. And then after your role in the 15 Office of Personnel Management, you then 16 started working as a financial consultant and 17 election fraud investigator, correct? 18 A. Correct. 19 Q. And what work do you do as a 20 financial consultant? 21 A. Assisting businesses on their 22 financial structure, raising capital,</p>

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<p style="text-align: right;">Page 81</p> <p>1 evaluating financial disputes. Yeah, that's</p> <p>2 it.</p> <p>3 Q. And what type of businesses have you</p> <p>4 been assisting?</p> <p>5 A. Medical practices -- one -- one</p> <p>6 medical practice, a -- a real estate company.</p> <p>7 Yeah, those two and the financial consulting.</p> <p>8 Q. And what type of entities were you</p> <p>9 working with in helping raise capital?</p> <p>10 A. Both of those, the medical --</p> <p>11 medical practice and the real estate company.</p> <p>12 Q. And you mentioned also evaluating</p> <p>13 financial dispute. How many disputes?</p> <p>14 A. Both of those entities had financial</p> <p>15 disputes as well. So one was, like, a lease</p> <p>16 renegotiation for the real estate company, and</p> <p>17 then there was a breach-of-contract issue with</p> <p>18 the medical practice.</p> <p>19 Q. And what work do you do as an</p> <p>20 election fraud investigator?</p> <p>21 A. So I -- I was helping with the team</p> <p>22 in Wisconsin. There was the -- there was a</p>	<p style="text-align: right;">Page 83</p> <p>1 than Mr. Gableman, were these Wisconsin</p> <p>2 legislative representatives? Like, who are</p> <p>3 these individuals?</p> <p>4 A. Oh, attorneys.</p> <p>5 Q. Were they attorneys in Wisconsin?</p> <p>6 A. No. None of them were barred in</p> <p>7 Wisconsin other than Gableman.</p> <p>8 Q. And how did you obtain this work</p> <p>9 assisting on this election fraud investigation</p> <p>10 in Wisconsin?</p> <p>11 A. I don't -- I don't recall how it</p> <p>12 happened. I probably knew one of them or two</p> <p>13 of them and -- oh, yeah. So Mike Gableman had</p> <p>14 worked at the Office of Personnel Management,</p> <p>15 so I knew him from OPM, and that's probably how</p> <p>16 it happened.</p> <p>17 Q. Other than -- strike that.</p> <p>18 And did this team put together any</p> <p>19 kind of report with their findings?</p> <p>20 A. Yes, they did.</p> <p>21 Q. And at a high level, what were those</p> <p>22 findings?</p>
<p style="text-align: right;">Page 82</p> <p>1 retired justice of the Wisconsin Supreme Court,</p> <p>2 Mike Gableman, who was retained by the</p> <p>3 legislature to evaluate election fraud in 2020.</p> <p>4 And I assisted on that team in Wisconsin for</p> <p>5 part of that -- part of the time they were</p> <p>6 doing their evaluation and writing their</p> <p>7 report.</p> <p>8 Q. And this Mr. Gableman, was he</p> <p>9 appointed by the Wisconsin legislature?</p> <p>10 A. Yes, he was. It may -- it may have</p> <p>11 been by the -- the speaker of the assembly,</p> <p>12 Robin Vos, but I guess through the power -- his</p> <p>13 power as the speaker of the assembly, he -- he</p> <p>14 hired and paid Mike Gableman to conduct a</p> <p>15 Wisconsin election investigation.</p> <p>16 Q. And you indicated that you helped</p> <p>17 the team. Who was the team?</p> <p>18 A. Okay. So it was Mike Gableman,</p> <p>19 Andrew Kloster, Clint Lancaster, myself, and</p> <p>20 there was one other I can't remember. One</p> <p>21 other guy on there.</p> <p>22 Q. And these other gentlemen, other</p>	<p style="text-align: right;">Page 84</p> <p>1 A. That -- that there was bribery by</p> <p>2 Facebook, CTCL, to gain illegal access to the</p> <p>3 voter rolls and have front-run inside</p> <p>4 information on how people had requested</p> <p>5 absentee ballots and whether they returned them</p> <p>6 or not. No one else had that access. That was</p> <p>7 one. So it was -- the whole Facebook CTCL</p> <p>8 bribery part was one.</p> <p>9 And the second one was how all the</p> <p>10 special monitors that were required by law to</p> <p>11 be inside the nursing homes -- they were all</p> <p>12 pulled out of the nursing homes and that many</p> <p>13 residents of the nursing homes had -- had votes</p> <p>14 reported for them, including people who were</p> <p>15 judged to be incompetent and not able to vote.</p> <p>16 So there was -- there was quite a bit of</p> <p>17 election fraud inside the nursing homes. That</p> <p>18 was the second.</p> <p>19 And the third was -- I'm drawing a</p> <p>20 blank. I think it was on the drop box -- well,</p> <p>21 we were -- we were looking at the absentee</p> <p>22 ballots and the early voting, where they were.</p>

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<p style="text-align: right;">Page 85</p> <p>1 Most likely there were folks who were ballot --</p> <p>2 illegally trafficking ballots, mules, if you</p> <p>3 will, ballot mules, in Milwaukee in particular,</p> <p>4 and how the drop boxes were -- there were</p> <p>5 exploited where no one -- no one know who was</p> <p>6 -- the identities of the people dropping things</p> <p>7 in drop boxes were not ascertained. So there</p> <p>8 was likely ballot fraud in the drop boxes and</p> <p>9 in the ballot trafficking.</p> <p>10 Q. Other than this Wisconsin</p> <p>11 investigation that you were a part of, have you</p> <p>12 done any other work as an election fraud</p> <p>13 investigator?</p> <p>14 A. Yes.</p> <p>15 Q. What work have you done?</p> <p>16 A. I am on the Georgia RICO team.</p> <p>17 Q. What is the Georgia RICO team?</p> <p>18 A. They were the 19 people that were</p> <p>19 indicted in Georgia for allegedly being</p> <p>20 involved in -- in, I guess, disputing the</p> <p>21 election results. I'm not sure what the</p> <p>22 charges actually were, but -- but they were</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. What else?</p> <p>2 A. Help to advise the legislature -- or</p> <p>3 rule -- rulemaking before the Georgia State</p> <p>4 Election Board.</p> <p>5 Q. And who hired you to help advise the</p> <p>6 Georgia Election Board?</p> <p>7 A. I was assisting the Georgia GOP on</p> <p>8 that.</p> <p>9 Q. So that's the Georgia Republican</p> <p>10 party?</p> <p>11 A. Yes.</p> <p>12 Q. Any other election fraud work that</p> <p>13 you have done?</p> <p>14 A. Raised some money for the electors,</p> <p>15 the alternate electors who have been indicted</p> <p>16 around the country, Michigan, Georgia, Arizona.</p> <p>17 Q. Anything else?</p> <p>18 A. Just help -- helping on the civil</p> <p>19 litigation in Georgia for Caroline Jeffords v.</p> <p>20 Fulton County.</p> <p>21 Q. What is that litigation?</p> <p>22 A. It's a civil litigation that alleges</p>
<p style="text-align: right;">Page 86</p> <p>1 alleged to have been involved in a conspiracy</p> <p>2 to -- to challenge the election results.</p> <p>3 Q. And who hired you?</p> <p>4 A. I'm -- that is where I met Chris</p> <p>5 Kachouroff. I wasn't -- I wasn't -- yeah,</p> <p>6 that's Chris Kachouroff.</p> <p>7 Q. So Mr. Kachouroff hired you?</p> <p>8 A. I'm -- I'm not -- I'm on the -- I'm</p> <p>9 on the team. I'm not -- I'm not paid.</p> <p>10 Q. Are you working for a particular</p> <p>11 individual who has been indicted as part of</p> <p>12 this Georgia RICO case?</p> <p>13 A. Yes. Harrison Floyd.</p> <p>14 Q. Who is Harrison Floyd?</p> <p>15 A. He was the -- he was a Trump</p> <p>16 campaign employee in 2020. He is a resident of</p> <p>17 Maryland.</p> <p>18 Q. And other than your work on a</p> <p>19 Georgia RICO team and this Wisconsin that</p> <p>20 you're handling, have you done any other work</p> <p>21 as an election fraud investigator?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 88</p> <p>1 election fraud. It's still open.</p> <p>2 Q. And who hired you for that work?</p> <p>3 A. Again, not hired, not paid, just</p> <p>4 connecting people there. Caroline Jeffords is</p> <p>5 the plaintiff.</p> <p>6 Q. What do you mean by "just connecting</p> <p>7 people"?</p> <p>8 A. Making sure that the right</p> <p>9 researchers are -- are helping her and lined</p> <p>10 her up with counsel.</p> <p>11 Q. So we spent probably about the last</p> <p>12 30 minutes going through your background --</p> <p>13 well, strike that.</p> <p>14 Before all of this work that you</p> <p>15 described concerning election fraud, so prior</p> <p>16 to January 2021, did you have any experience</p> <p>17 investigating election fraud?</p> <p>18 A. Nothing -- nothing major. Certainly</p> <p>19 nothing like we saw in 2020. 2020 was a very</p> <p>20 aggressive multi- -- multivector types of</p> <p>21 election fraud.</p> <p>22 Q. Noting just in the 30 minutes or so</p>

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<p style="text-align: right;">Page 89</p> <p>1 going through your educational background and</p> <p>2 work experience, I just want to confirm a few</p> <p>3 things.</p> <p>4 You are not an accountant, correct?</p> <p>5 A. I do not have a C.P.A.</p> <p>6 Q. You are not an auditor, correct?</p> <p>7 A. Correct.</p> <p>8 Q. You are not an economist, correct?</p> <p>9 A. Correct.</p> <p>10 Q. You are not a certified fraud</p> <p>11 examiner, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Are you a member of the American</p> <p>14 Institute of Certified Public Accountants, also</p> <p>15 known as the AICPA?</p> <p>16 A. No, I am not.</p> <p>17 Q. Are you familiar with the AICPA Code</p> <p>18 of Professional Conduct and Bylaws?</p> <p>19 A. Yes.</p> <p>20 Q. And how are you familiar with that?</p> <p>21 A. Oh, from my work at Chase, just</p> <p>22 looking into their standards and -- and</p>	<p style="text-align: right;">Page 91</p> <p>1 reporters, you know, the corporate entities</p> <p>2 that have to abide by that, they -- they drive</p> <p>3 that.</p> <p>4 And I -- and I guess I am more</p> <p>5 familiar with them because of my work at Chase</p> <p>6 and Fannie Mae.</p> <p>7 Q. When you're saying "corporate</p> <p>8 entities drive that," are you referring to what</p> <p>9 is set forth in the AICPA Forensic and</p> <p>10 Valuation Services Practice Aid Calculating</p> <p>11 Lost Profits?</p> <p>12 A. No. I know what the -- what the</p> <p>13 public companies have to do when they -- when</p> <p>14 they do their own forecasting. So financial</p> <p>15 institutions, you know, what they're obligated</p> <p>16 to do. And, certainly, they do rely on their</p> <p>17 auditors, and the auditors rely on the AICPA,</p> <p>18 but I know the standards that the financial</p> <p>19 institutions have to follow.</p> <p>20 Q. Are you familiar with the AICPA</p> <p>21 Forensic and Valuation Services Practices Aid</p> <p>22 Attaining Reasonable Certainty in Economic</p>
<p style="text-align: right;">Page 90</p> <p>1 practices.</p> <p>2 Q. Are you familiar with the AICPA</p> <p>3 Statement on Standards for Forensic Services?</p> <p>4 A. No, I'm not.</p> <p>5 Q. Are you familiar with the AICPA</p> <p>6 Forensic and Valuation Services Practices Aid</p> <p>7 Calculating Lost Profits?</p> <p>8 A. I believe I looked at that under the</p> <p>9 Gorowsky report.</p> <p>10 Q. Prior to your work in connection</p> <p>11 with looking at the Gorowsky report, had you</p> <p>12 ever looked at the AICPA Forensic and Valuation</p> <p>13 Services Practices Aid Calculating Lost</p> <p>14 Profits?</p> <p>15 A. No. It's certainly guidance that</p> <p>16 was put out. The folks in the real world --</p> <p>17 not that they are not in the real world but</p> <p>18 that the actual providers of companies that are</p> <p>19 in the space, not just their auditors, they --</p> <p>20 they sort of drive that -- that practice, not</p> <p>21 necessarily the AICPA. They look at the AICPA</p> <p>22 to assist them, but -- but the actual</p>	<p style="text-align: right;">Page 92</p> <p>1 Damages Calculations?</p> <p>2 A. I looked -- I did look at that under</p> <p>3 the Gorowsky report.</p> <p>4 Q. And then prior to looking at that in</p> <p>5 connection with the Gorowsky report, had you</p> <p>6 previously looked at that?</p> <p>7 A. I -- so in -- in very similar</p> <p>8 practices when I ran the Fannie Mae lost</p> <p>9 forecasting committee, I was a parliamentarian</p> <p>10 for that. We actually had to do that in</p> <p>11 practice in much more detail than what AICPA</p> <p>12 puts out. So -- so we knew the standards</p> <p>13 for -- for valuing long-term assets, impaired</p> <p>14 assets, all that. So I'm -- I'm familiar with</p> <p>15 that.</p> <p>16 Q. Are you familiar with generally</p> <p>17 accepted accounting principles, also known as</p> <p>18 GAAP?</p> <p>19 A. Yes.</p> <p>20 Q. How are you familiar with GAAP?</p> <p>21 A. Oh, through FASB pronouncements. I</p> <p>22 guess I kept up with them over the years with</p>

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<p style="text-align: right;">Page 93</p> <p>1 Chase and -- and with Fannie Mae because they</p> <p>2 definitely impacted our business when companies</p> <p>3 would put out -- you know, we -- we could tell</p> <p>4 when our financial statement analysis, whether</p> <p>5 companies were actually complying with GAAP or</p> <p>6 not, whether they used -- they followed the</p> <p>7 FASB pronouncements, the AICPA pronouncements,</p> <p>8 the advisory opinions. So I just had to deal</p> <p>9 with it every day in my -- in my 20-plus years,</p> <p>10 you know, of -- of doing -- with work at Fannie</p> <p>11 and -- and Chase.</p> <p>12 Q. In completing your July 9 report,</p> <p>13 did you review any GAAP rules or guidelines?</p> <p>14 A. No.</p> <p>15 Q. Do you consider yourself an expert</p> <p>16 in GAAP?</p> <p>17 A. No. I'm -- I'm adept in it, but I</p> <p>18 wouldn't consider myself an expert.</p> <p>19 Q. Are you familiar with the</p> <p>20 International Accounting Standards Board, also</p> <p>21 known as IFRS?</p> <p>22 A. Yes, I am.</p>	<p style="text-align: right;">Page 95</p> <p>1 A. The Ambac, Keystone -- so AMTRUST --</p> <p>2 so -- so Number -- Number 1 and Number 4,</p> <p>3 definitely.</p> <p>4 Number 2 and Number 3 are sort of</p> <p>5 unique because they are specifically in the</p> <p>6 FDIC world or insurance regulatory world. I</p> <p>7 was -- I was -- I guess it's a similar</p> <p>8 designation in those cases. I was the expert</p> <p>9 on the AMTRUST case. Hold on. Yeah. Ambac</p> <p>10 was -- was -- yes. I did an affidavit as a</p> <p>11 recognized financial expert in that.</p> <p>12 AMTRUST was FDIC work -- FDIC</p> <p>13 workout. The Triad Guaranty was a workout of</p> <p>14 an insurance company. So it was similar in 2</p> <p>15 and 3. And I can --</p> <p>16 Q. And --</p> <p>17 A. -- I testified in both those cases.</p> <p>18 Q. By "both those cases," you mean the</p> <p>19 AMTRUST Financial case and the Triad --</p> <p>20 A. Right.</p> <p>21 Q. -- Guaranty?</p> <p>22 A. That's right.</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. In completing your July 9 report,</p> <p>2 did you review any IFRS rules or guidelines?</p> <p>3 A. No, I did not. And -- and by your</p> <p>4 question, just the way you're going with</p> <p>5 this -- so you know that Smartmatic doesn't</p> <p>6 use -- well, certainly, Smartmatic USA doesn't</p> <p>7 use IFRS, and it actually doesn't even use</p> <p>8 GAAP. So they use -- I think they use</p> <p>9 government accounting standards, so it's GAS,</p> <p>10 G-A-S, so -- so Smartmatic USA doesn't use</p> <p>11 GAAP, doesn't use IFRS.</p> <p>12 Q. Do you consider yourself an expert</p> <p>13 in IFRS?</p> <p>14 A. No.</p> <p>15 Q. Okay. In Appendix B to your report,</p> <p>16 you list four cases that you describe as</p> <p>17 significant case testimony, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Were you designated as a testifying</p> <p>20 expert in any of those cases?</p> <p>21 A. Yes. Let me just see.</p> <p>22 Q. Which ones?</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. And the other two cases, the Ambac</p> <p>2 case and the Keystone case, did you prepare</p> <p>3 expert reports?</p> <p>4 A. Affidavits, and -- and -- I did</p> <p>5 affidavits and gave testimony.</p> <p>6 Q. Was that in a court?</p> <p>7 A. For -- for use in court, yes.</p> <p>8 Sworn -- sworn depositions.</p> <p>9 Q. So both of those cases, you gave</p> <p>10 depositions?</p> <p>11 A. That's right.</p> <p>12 Q. And then these other two cases, the</p> <p>13 AMTRUST and Triad Guaranty case, did you</p> <p>14 provide any deposition testimony in those</p> <p>15 cases?</p> <p>16 A. Testified -- in the Fannie Mae-Triad</p> <p>17 case, I testified before the insurance</p> <p>18 regulator.</p> <p>19 In the AMTRUST -- that was in --</p> <p>20 Ohio Savings was the underlying operating</p> <p>21 company. The AMTRUST owned Ohio Savings. When</p> <p>22 they -- when they went to receivership, I was</p>

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<p style="text-align: right;">Page 97</p> <p>1 the -- I did not provide court testimony. I</p> <p>2 was -- and just -- I was just the recognized</p> <p>3 financial expert on the mortgage aspects of</p> <p>4 that case, mortgage servicing rights, yeah.</p> <p>5 Q. And -- and the -- and this AMTRUST</p> <p>6 case, did you give deposition testimony?</p> <p>7 A. I can't -- I can't recall. I don't</p> <p>8 know -- can't recall.</p> <p>9 Q. Have you prepared any expert reports</p> <p>10 in any other cases beyond the four that you</p> <p>11 list here in your Appendix B?</p> <p>12 A. No.</p> <p>13 Q. Has any court or arbitrator ever</p> <p>14 determined that you were not qualified to</p> <p>15 testify as an expert?</p> <p>16 A. No.</p> <p>17 Q. Has all or any part of your expert</p> <p>18 opinions ever been stricken by a court or</p> <p>19 arbitrator?</p> <p>20 A. No.</p> <p>21 Q. Has all or any part of your expert</p> <p>22 opinions ever been criticized by any court or</p>	<p style="text-align: right;">Page 99</p> <p>1 financial condition of the companies.</p> <p>2 Q. For --</p> <p>3 A. The courts relied on those and</p> <p>4 actually affirmed them, by the way.</p> <p>5 Q. So the two cases you just listed</p> <p>6 were -- was the Ambac case and the Triad case,</p> <p>7 correct?</p> <p>8 A. That's right.</p> <p>9 Q. And in the Ambac case, were you</p> <p>10 asked to calculate what the company's revenue</p> <p>11 would have been but for the misconduct or the</p> <p>12 conduct that was being complained about?</p> <p>13 A. So there was not -- what misconduct?</p> <p>14 Q. So you talk -- so -- well, here.</p> <p>15 Help you out.</p> <p>16 A. Those -- those cases -- those two</p> <p>17 cases were not looking for a defendant to sue.</p> <p>18 So there was no damaging statement in those</p> <p>19 cases, but -- but the same core plus</p> <p>20 forecasting is required in those cases.</p> <p>21 So you -- you got -- in both of</p> <p>22 those cases, I had to forecast the</p>
<p style="text-align: right;">Page 98</p> <p>1 arbitrator?</p> <p>2 A. No.</p> <p>3 Q. These four cases that you list in</p> <p>4 your Appendix B, were you asked in any of those</p> <p>5 cases to render an expert opinion on a claim of</p> <p>6 lost profits?</p> <p>7 A. So yes, so it's -- the Ambac case</p> <p>8 very much dealt with forecasting future</p> <p>9 performance of the company. So we -- we had to</p> <p>10 determine -- I had to determine the projections</p> <p>11 of cash flows. So that is -- is essentially</p> <p>12 the same thing. You know, forecasting lost</p> <p>13 profits, the only way you can get there is to</p> <p>14 forecast the cash flows and -- and the</p> <p>15 financial performance of the company.</p> <p>16 Actually, in Triad Guaranty, I had</p> <p>17 to do the same thing. So in Number 3, so when</p> <p>18 we had to forecast their claims-paying ability,</p> <p>19 a necessary part of that is to forecast their</p> <p>20 profits. So I was brought in in Ambac and</p> <p>21 AMTRUST -- I'm sorry -- Ambac and Triad</p> <p>22 particularly to do the forecasting of the</p>	<p style="text-align: right;">Page 100</p> <p>1 claims-paying ability and that's comprehensive.</p> <p>2 You have to look at the entire financial</p> <p>3 condition. How much money are they going to</p> <p>4 make? How much money are they going to pay?</p> <p>5 And -- and we -- we argued about that, and my</p> <p>6 side prevailed. My opinions prevailed.</p> <p>7 But there was no -- there was no</p> <p>8 damaging statement catalyst. There were --</p> <p>9 there were other factors that drove the</p> <p>10 performance, but it wasn't damaging statements.</p> <p>11 Q. So in both of those cases, it did</p> <p>12 not involve a party committing any type of</p> <p>13 unlawful conduct or any type of other conduct</p> <p>14 that was alleged to have caused financial harm?</p> <p>15 A. No.</p> <p>16 MR. KACHOUROFF: I'm going to object</p> <p>17 to the form of that.</p> <p>18 THE WITNESS: No.</p> <p>19 Yeah --</p> <p>20 MR. KACHOUROFF: Object to form.</p> <p>21 THE WITNESS: -- the form was</p> <p>22 interesting.</p>

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<p style="text-align: right;">Page 101</p> <p>1 But no. These are macro impacts on</p> <p>2 -- on -- there was no -- there was no alleged</p> <p>3 unlawful behavior in those two cases.</p> <p>4 But the science is exactly the same</p> <p>5 as calculating lost profits. You have -- you</p> <p>6 can't do -- you can't do one without the other.</p> <p>7 Forecasting the ability to pay is the same as</p> <p>8 forecasting profits. If you don't have any</p> <p>9 profits, you don't have any ability to pay.</p> <p>10 BY MR. LETKEWICZ:</p> <p>11 Q. So this Ambac case, what was the</p> <p>12 nature of this litigation?</p> <p>13 A. So in short, layman's terms, Ambac</p> <p>14 was running out of money, had a lot of claims</p> <p>15 to pay, and they basically wanted to issue IOUs</p> <p>16 to -- to basically say, oh, we'll -- we'll pay</p> <p>17 you later. So we had to calculate what was an</p> <p>18 acceptable form for the court to approve on a</p> <p>19 deferred -- deferred-claims-payment basis.</p> <p>20 So some of it was going to be</p> <p>21 current pay of current claims as they came in,</p> <p>22 and then the rest was just going to be put into</p>	<p style="text-align: right;">Page 103</p> <p>1 your answer?</p> <p>2 A. Go ahead.</p> <p>3 Q. So both of these cases focused on</p> <p>4 the ability of a company to pay claims; is that</p> <p>5 right?</p> <p>6 A. Yes, but it's -- it's everything</p> <p>7 involved in that. It's revenue, expenses,</p> <p>8 business, business growth.</p> <p>9 Q. And, again, to be clear, there was</p> <p>10 no claim being brought that some entity had</p> <p>11 engaged in some type of misconduct and caused</p> <p>12 harm to Ambac or Triad, correct?</p> <p>13 MR. KACHOUROFF: Objection to form.</p> <p>14 Calls for legal conclusion.</p> <p>15 THE WITNESS: There were -- there</p> <p>16 were allegations in both cases of -- of</p> <p>17 mismanagement, but it's not -- it's not --</p> <p>18 again, there was no -- there was no alleged</p> <p>19 damaging statements, you know, that -- Ambac</p> <p>20 didn't say, well, somebody hurt my feelings</p> <p>21 and, therefore, I couldn't make any money.</p> <p>22 Triad said somebody -- you know, somebody hurt</p>
<p style="text-align: right;">Page 102</p> <p>1 an IOU.</p> <p>2 Same -- same thing -- same thing</p> <p>3 with Triad. It was basically what -- what</p> <p>4 amount could they pay, and we actually -- in</p> <p>5 both -- both those cases, we built in a</p> <p>6 mechanism so as -- as financial performance</p> <p>7 would change, we could adjust up or down the</p> <p>8 current claims-paying function. And -- and we</p> <p>9 did in both of those cases. We later had to go</p> <p>10 back and adjust the current claims-paying</p> <p>11 ratio.</p> <p>12 So basically everybody's --</p> <p>13 everybody's claims would get stacked up, and</p> <p>14 they'd pay, you know, say, 75 cents on the</p> <p>15 dollar, and they'd defer the other 25. So I</p> <p>16 basically had to -- you know, I was the one</p> <p>17 calculating what these companies could afford</p> <p>18 to pay, and that -- that was totally based on</p> <p>19 the lost -- you know, that's -- that is</p> <p>20 forecasting profits.</p> <p>21 Q. So the focus of both -- sorry. Do</p> <p>22 you have something else you wanted to add to</p>	<p style="text-align: right;">Page 104</p> <p>1 my feeling, so I couldn't make any money. None</p> <p>2 of that happened in this case -- in these</p> <p>3 cases.</p> <p>4 BY MR. LETKEWICZ:</p> <p>5 Q. So let me ask my question a little</p> <p>6 bit differently.</p> <p>7 These allegations of mismanagement,</p> <p>8 there was no claim against either the entity or</p> <p>9 the person that were engaging in this</p> <p>10 mismanagement. They were not -- none of those</p> <p>11 entities or persons were a party to that --</p> <p>12 those litigations, correct?</p> <p>13 A. Could you repeat that again? I'm</p> <p>14 not sure what you mean.</p> <p>15 MR. KACHOUROFF: Objection.</p> <p>16 THE WITNESS: Let me -- can I offer</p> <p>17 one thing? So there -- there were disputes in</p> <p>18 Ambac basically where we -- there were -- there</p> <p>19 were allegations of fraud on conveyance, so</p> <p>20 they were basically trying to bifurcate the</p> <p>21 entity into what is called a good bank and a</p> <p>22 bad bank. And maybe you've worked on these.</p>

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<p style="text-align: right;">Page 105</p> <p>1 But -- but Ambac was trying to stuff 2 certain bad business in the bad bank and good 3 business in the good bank, so there were 4 disputes about that. Now, there were 5 allegations -- you know, it was going get to 6 fraudulent conveyance type of things where -- 7 where the bifurcation was not fair to certain 8 classes of creditors. So we got into -- got 9 into that quite a bit. 10 Now, whether that is illegal -- you 11 know, it's not -- it's not analogous to, you 12 know, somebody having their feelings hurt by 13 somebody making some statements. 14 BY MR. LETKEWICZ: 15 Q. Were these -- and it's the -- were 16 there claims of fraudulent conveyance that were 17 being alleged in this case where they were 18 trying to recover assets from the company or 19 the person that received the fraudulent 20 conveyance? 21 A. Some creditors disputed the -- the 22 bifurcation and what business would go into the</p>	<p style="text-align: right;">Page 107</p> <p>1 A. Conveying assets to a bad bank -- or 2 conveying -- moving good assets from a -- 3 from -- from the bad bank into the good bank 4 and vice versa. We just wanted to make sure -- 5 when you split a legal entity apart, the -- the 6 way you do that bifurcation can have adverse 7 impacts on certain classes of creditors, of 8 equity holders, all that. We just wanted to 9 make sure it was done the right way, fair and 10 square, right. 11 Q. So in addition to -- in addition to 12 evaluating a company -- the company's ability 13 to pay a claim, it was also ensuring that there 14 were not fraudulent conveyances; is that a fair 15 assessment? 16 A. Yes. 17 Q. Has any court or arbitrator 18 recognized you as an expert in calculating lost 19 profits? 20 A. No. Is there such a designation? 21 Q. I am asking you. 22 A. I don't -- I don't think -- I don't</p>
<p style="text-align: right;">Page 106</p> <p>1 bad bank. 2 Q. But, again, the focus was -- and in 3 both of these cases -- on the Ambac and Triad's 4 ability to pay claims, right? 5 A. It was. It was. The related 6 part -- 7 Q. And -- 8 A. The related part of Ambac was the 9 bifurcation that they were proposing, and there 10 were -- there was another mortgage bond -- it 11 was a bond insurance company trying to do the 12 same thing. One of their major competitors had 13 just bifurcated. We didn't have any business 14 with them thankfully. 15 But -- so this -- this was kind of a 16 shake-and-bake strategy in the market that we 17 had seen, and for Chase and for Fannie Mae -- 18 I'm sorry -- in this case with Ambac with 19 Fannie Mae, we wanted to make sure that we 20 weren't the victims of a shake and bake. 21 Q. What do you mean by a shake and 22 bake?</p>	<p style="text-align: right;">Page 108</p> <p>1 think there is such a designation, like a lost 2 profit expert in court, so no. 3 Q. Prior to this case, have you been 4 asked to analyze or critique a claim of lost 5 profits? 6 A. Yes. 7 Q. And which cases were those? 8 A. Those weren't -- oh, in a case or in 9 an engagement? Did you want it in a court 10 case? 11 Q. Let's start with the court case. 12 MR. KACHOUROFF: I'll object because 13 he has asked and answered that one already, I 14 think. 15 THE WITNESS: I did, yeah -- 16 BY MR. LETKEWICZ: 17 Q. Well, I can short-circuit it. 18 A. Okay. 19 Q. The -- other than the Ambac and 20 Triad matter, have you ever been asked to 21 analyze or critique a claim of lost profits in 22 court?</p>

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<p style="text-align: right;">Page 109</p> <p>1 A. In court, no.</p> <p>2 Q. You raised being engaged. Have you</p> <p>3 been engaged in a matter, other than the court</p> <p>4 cases we have discussed where you were asked to</p> <p>5 critique a claim of lost profits, outside of</p> <p>6 this specific case?</p> <p>7 A. Yes. I just -- I'm -- over the</p> <p>8 years, I just -- one may have been a medical</p> <p>9 practice, not the same one I mentioned before.</p> <p>10 But another was a brokerage firm and -- but</p> <p>11 that was -- those were civil. They weren't --</p> <p>12 they weren't in court, and they were just</p> <p>13 contractual disputes.</p> <p>14 I am trying to think if I've -- if</p> <p>15 I've done any others. I think perhaps a</p> <p>16 brokerage firm and a medical practice group.</p> <p>17 Q. So in those two cases, were you</p> <p>18 asked --</p> <p>19 A. They weren't -- I guess they</p> <p>20 weren't -- they weren't court cases, though,</p> <p>21 so...</p> <p>22 Q. In those two cases, were you asked</p>	<p style="text-align: right;">Page 111</p> <p>1 in analyzing or calculating lost profits?</p> <p>2 A. Yes, I do.</p> <p>3 Q. And how so?</p> <p>4 A. Wow. So I have had to do that in</p> <p>5 all the deals I have done at Chase and at</p> <p>6 Fannie Mae. So I -- all the customers that --</p> <p>7 the large sophisticated financial institutions</p> <p>8 that I worked with at both Chase and Fannie</p> <p>9 Mae, you know, had to determine whether they</p> <p>10 were good for the money where we extended</p> <p>11 credit to them in many types of forms.</p> <p>12 And we -- like, I needed to</p> <p>13 basically determine for -- for our own</p> <p>14 shareholders what their ability to repay is,</p> <p>15 and I had to do it for -- for lots of reasons,</p> <p>16 for our own loss forecasting at Fannie Mae.</p> <p>17 And I had to do it -- had to do it</p> <p>18 at FHA as well. Are these entities going to</p> <p>19 pay us back? So we had to do -- we conducted</p> <p>20 forecasts. I conducted forecasts, and it was</p> <p>21 required for our financial reporting at Fannie</p> <p>22 Mae. We needed to know is -- are the entities</p>
<p style="text-align: right;">Page 110</p> <p>1 to calculate the lost profits of -- sorry.</p> <p>2 Let's break this up.</p> <p>3 In the medical practice, were you</p> <p>4 asked to calculate the lost profits of the</p> <p>5 medical practice?</p> <p>6 A. Yes. Yes.</p> <p>7 Q. And in this brokerage case, were you</p> <p>8 asked to calculate the lost profits of the</p> <p>9 brokerage firm?</p> <p>10 A. Yes.</p> <p>11 Q. And was that, doing this financial</p> <p>12 forecasting, inability to pay or did it involve</p> <p>13 something different?</p> <p>14 A. It was -- it was not a claims --</p> <p>15 those were not in the realm of claims-paying</p> <p>16 ability. They were just straight forecasts.</p> <p>17 What were the business -- what is it? What</p> <p>18 expected result would come from -- from -- from</p> <p>19 the medical practice, if you will, in the one</p> <p>20 case had -- had the certain behavior hadn't</p> <p>21 taken place. But it was financial forecasting.</p> <p>22 Q. Do you consider yourself an expert</p>	<p style="text-align: right;">Page 112</p> <p>1 that owe us money, are they going to fail or</p> <p>2 are they going to -- what is a reasonable</p> <p>3 certainty of -- of them repaying us and in what</p> <p>4 amounts over what period of time. So I had to</p> <p>5 do that all the time.</p> <p>6 Q. So this work that you just</p> <p>7 described, that was focused on an entity's</p> <p>8 ability to pay back credit that had been</p> <p>9 extended to them, correct?</p> <p>10 A. Yes. Yes.</p> <p>11 Q. Yeah.</p> <p>12 A. And it's not just -- not just</p> <p>13 credit. It's exposure, legal obligations, you</p> <p>14 know, like a recourse obligation to buy back</p> <p>15 loans from us, to settle derivative trades.</p> <p>16 All kinds of -- you know, if you -- extending</p> <p>17 credit, I would just treat that broadly. It's</p> <p>18 exposure. We had -- what? -- you know,</p> <p>19 hundred -- hundreds of billions of exposure,</p> <p>20 and I -- my job was to make sure that our</p> <p>21 exposure was -- was -- was covered and repaid.</p> <p>22 Q. And so, again, to summarize, it was</p>

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<p style="text-align: right;">Page 113</p> <p>1 focused on an entity's ability to pay claims, 2 correct, broadly? 3 A. To -- to make money, to -- to earn 4 profits, to repay obligations, to satisfy 5 exposures, all that. 6 Q. Has any court recognized you as an 7 expert in calculating damages? 8 A. No. 9 Q. Do you consider yourself an expert 10 in calculating damages? 11 A. Yes. 12 Q. How so? 13 A. I'm -- I have been trained -- been 14 doing this for 20, 30 years on looking at root 15 cause analysis, and it's identical. If you -- 16 if you know how to look at root cause of -- of 17 impacts on a company's financial condition or 18 performance, it's the same as identifying what 19 damages are. I can -- I can say those 20 decisions had a reasonable certainty of leading 21 to this type of impact on the financial 22 condition.</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. And are you able to cite any 2 authoritative source that sets forth these are 3 the factors that you need to look at in a root 4 cause analysis? 5 A. No. 6 Q. And so in your report, you describe 7 your field as the field of forensic and 8 financial forecasting. Does that sound 9 familiar? 10 A. Yes. 11 Q. What is forensic and financial 12 forecasting? 13 A. Forensics is looking at the 14 historical, what actually happened, what is the 15 root cause impact on the financial condition, 16 and then is it likely or what is the 17 expectation, is that repeating or not, what are 18 the drivers of the operation of a company. 19 And the -- and the forensics is -- 20 it's just like you do with, you know, legal due 21 diligence or -- or medical due diligence. You 22 have to just see what are -- what's --</p>
<p style="text-align: right;">Page 114</p> <p>1 Q. And what do you mean by "root cause 2 analysis"? 3 A. Okay. So there are underlying 4 factors that -- that result in financial 5 performance or financial condition. You have 6 to look at those underlying factors. Some are 7 really simple to say that is a direct cause. 8 Other -- other things are indirect causes. So 9 it's the -- the core reason why a company 10 performed or did not perform a particular way. 11 Q. And those factors, is that based 12 on -- on a particular authoritative source, 13 guidance? How do you determine the factors? 14 A. So I guess it's my training and 15 experience, what I learned at Chase and the 16 training programs, what we applied day to day 17 in -- in the transactions we had -- we did with 18 companies. I -- I don't think there is a 19 certification of root cause analysts. You 20 know, you just have to do it. It's like just 21 being in a -- being in a -- being in a position 22 for decades. You kind of get it.</p>	<p style="text-align: right;">Page 116</p> <p>1 what's -- what's driving the -- what's driving 2 the -- the performance. 3 Q. Do you have any accreditation 4 recognizing you as an expert in forensic and 5 financial forecasting? 6 A. No. 7 Q. Are you aware of any accreditation 8 that recognizes someone as an expert in 9 forensic and financial forecasting? 10 A. I think there is maybe a forensic 11 examiner, a CFE, but I don't know about a 12 forecasting accreditation. 13 Q. You don't have a CFE, correct? 14 Did you hear my question? 15 A. What's that? 16 Q. Do you -- you don't have a C F E, 17 correct? 18 A. Correct. 19 Q. Do you belong to any organizations 20 relating to forensic and financial forecasting? 21 A. No. 22 Q. All right. Has any court or</p>

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<p style="text-align: right;">Page 117</p> <p>1 arbitrator recognized you as an expert in</p> <p>2 forensic or financial forecasting?</p> <p>3 A. The courts that we talked about with</p> <p>4 Ambac and Triad definitely recognized me as the</p> <p>5 expert in -- in forecasting.</p> <p>6 Q. Are you aware of any treatise,</p> <p>7 textbook, or authoritative source concerning</p> <p>8 forensic and financial forecasting?</p> <p>9 A. I'm sure they are out there. I</p> <p>10 don't -- but I don't know -- I don't -- don't</p> <p>11 know.</p> <p>12 Q. Do you have any licenses,</p> <p>13 certifications, or accreditations?</p> <p>14 A. No.</p> <p>15 Q. Have you ever worked for a voting</p> <p>16 machine company?</p> <p>17 A. No.</p> <p>18 Q. Have you ever consulted for a voting</p> <p>19 machine company?</p> <p>20 A. No.</p> <p>21 Q. Have you ever worked for a company</p> <p>22 that sells any election products or services?</p>	<p style="text-align: right;">Page 119</p> <p>1 procurement process, correct?</p> <p>2 A. Correct, I was not.</p> <p>3 Q. Have you ever worked for -- or</p> <p>4 strike that.</p> <p>5 Have you ever been -- strike that.</p> <p>6 Have you ever worked for a</p> <p>7 government body or agency that procures</p> <p>8 election products or services? And my question</p> <p>9 is focused on your -- you having personal</p> <p>10 involvement.</p> <p>11 A. No.</p> <p>12 Q. Have you ever consulted for a</p> <p>13 government body or agency concerning the</p> <p>14 procurement of election products or services?</p> <p>15 A. No.</p> <p>16 Q. Have you ever worked for a</p> <p>17 government body or agency that runs an</p> <p>18 election?</p> <p>19 MR. KACHOUROFF: I'm going to object</p> <p>20 to form on that one.</p> <p>21 MR. LETKEWICZ: Sure. I'll ask --</p> <p>22 I'll ask it a different way.</p>
<p style="text-align: right;">Page 118</p> <p>1 A. Election services, no.</p> <p>2 Q. Have you ever consulted for a</p> <p>3 company that sells any election products or</p> <p>4 services?</p> <p>5 A. No.</p> <p>6 Q. Have you ever worked for a</p> <p>7 government body or agency that considered</p> <p>8 procuring or procured voting machines?</p> <p>9 A. Is the U.S. -- if you count the U.S.</p> <p>10 government, I worked for the U.S. government.</p> <p>11 I don't -- the U.S. government procures -- what</p> <p>12 did you -- what did you ask? Election</p> <p>13 machines?</p> <p>14 Q. So I'll reask my question.</p> <p>15 Have you ever worked for a</p> <p>16 government body or agency that considered</p> <p>17 procuring or procured voting machines?</p> <p>18 A. I -- I worked for the U.S.</p> <p>19 government. I don't know if the U.S.</p> <p>20 government procured -- probably did around the</p> <p>21 world, so maybe the answer is yes.</p> <p>22 Q. But you were not involved in that</p>	<p style="text-align: right;">Page 120</p> <p>1 BY MR. LETKEWICZ:</p> <p>2 Q. Have you ever worked for a</p> <p>3 government body or agency where one of your</p> <p>4 responsibilities was to help run an election?</p> <p>5 A. No.</p> <p>6 Q. Have you ever consulted for a</p> <p>7 government body or agency where one of your</p> <p>8 responsibilities was to help run an election?</p> <p>9 A. No.</p> <p>10 Q. You are not an expert in defamation</p> <p>11 law, correct?</p> <p>12 A. No.</p> <p>13 Q. You are not an expert in assessing</p> <p>14 the reach of television, news articles, or any</p> <p>15 other publication, correct?</p> <p>16 A. As -- as an expert, is that what</p> <p>17 you're saying?</p> <p>18 Q. Yes. You're not an expert?</p> <p>19 A. No.</p> <p>20 Q. You're not an expert in government</p> <p>21 procurement laws, correct?</p> <p>22 A. Laws? You said --</p>

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<p style="text-align: right;">Page 121</p> <p>1 Q. Yes.</p> <p>2 A. No.</p> <p>3 Q. I said government procurement laws.</p> <p>4 A. I'm not -- I'm not an expert in it,</p> <p>5 though, but I'm aware.</p> <p>6 Q. You're not -- let me just -- I'll</p> <p>7 just reask to make sure we're clear.</p> <p>8 You do not consider yourself an</p> <p>9 expert in government procurement laws, correct?</p> <p>10 A. Correct.</p> <p>11 Q. You are not an expert in the</p> <p>12 marketing of products, correct?</p> <p>13 A. Wow. Is there such a designation?</p> <p>14 I mean --</p> <p>15 Q. I'm just asking: Do you consider</p> <p>16 yourself an expert in the marketing of</p> <p>17 products?</p> <p>18 MR. KACHOUROFF: Objection to form.</p> <p>19 Are you asking generally, or are you talking</p> <p>20 about election products?</p> <p>21 MR. LETKEWICZ: Marketing of any</p> <p>22 products.</p>	<p style="text-align: right;">Page 123</p> <p>1 have you worked on any matter, whether it be</p> <p>2 consulting in a court, where you were asked to</p> <p>3 assess the impact of a defamatory statement on</p> <p>4 a business?</p> <p>5 MR. KACHOUROFF: Asked and answered.</p> <p>6 THE WITNESS: Is there a next</p> <p>7 question?</p> <p>8 BY MR. LETKEWICZ:</p> <p>9 Q. You didn't answer my -- I'll ask my</p> <p>10 question again.</p> <p>11 Other than this specific case, have</p> <p>12 you worked on any matter where you were asked</p> <p>13 to assess the impact of a defamatory statement</p> <p>14 on a business?</p> <p>15 MR. KACHOUROFF: Same objection.</p> <p>16 THE WITNESS: Yeah. I'm -- I'm --</p> <p>17 I'll stick with my previous answers on that.</p> <p>18 BY MR. LETKEWICZ:</p> <p>19 Q. You actually have not answered that</p> <p>20 question.</p> <p>21 So my question is: Other than this</p> <p>22 specific case, have you been asked to assess</p>
<p style="text-align: right;">Page 122</p> <p>1 THE WITNESS: I am pretty good at</p> <p>2 it. If I -- if you put me on it, I think I can</p> <p>3 do a pretty good job. But I don't know if</p> <p>4 there's an -- no. I mean, if there is some</p> <p>5 label like that, no, I -- I don't have a label,</p> <p>6 like I'm an expert in marketing.</p> <p>7 BY MR. LETKEWICZ:</p> <p>8 Q. Do you consider yourself an expert</p> <p>9 in branding?</p> <p>10 A. Branding?</p> <p>11 Q. Yes.</p> <p>12 A. No.</p> <p>13 Q. Do you consider yourself an expert</p> <p>14 in defamation damages?</p> <p>15 A. So the financial damages, I'm an --</p> <p>16 I'm an expert in that. So defamation law, no,</p> <p>17 I'm not an expert in that.</p> <p>18 Q. Okay. Do you consider yourself an</p> <p>19 expert in assessing the impact of a defamatory</p> <p>20 statement on a business?</p> <p>21 A. Yes.</p> <p>22 Q. Other than this particular case,</p>	<p style="text-align: right;">Page 124</p> <p>1 the impact of a defamatory statement?</p> <p>2 A. I am just going through other</p> <p>3 situations.</p> <p>4 And by "this impact," you're just</p> <p>5 referring to financial impact --</p> <p>6 Q. Yes.</p> <p>7 A. -- or --</p> <p>8 Q. I'll ask it -- I'll ask it a</p> <p>9 different way.</p> <p>10 Other than this case, have you</p> <p>11 worked on a defamation case?</p> <p>12 A. Yes.</p> <p>13 Q. And which cases have you worked on?</p> <p>14 A. I was -- I was a -- I was helping my</p> <p>15 dad in his liquor store, and the previous</p> <p>16 manager accused me of defamation. So that's</p> <p>17 what -- I was thinking about that, and he was</p> <p>18 claiming damages from defamation. So that was</p> <p>19 -- I can't remember the guy's name. It was so</p> <p>20 many years ago. Gary somebody versus Hayden's</p> <p>21 Liquors so...</p> <p>22 Q. And were you serving as an expert in</p>

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<p style="text-align: right;">Page 125</p> <p>1 that case?</p> <p>2 A. No. I was -- I was purportedly the</p> <p>3 defamatory party.</p> <p>4 Q. Do you consider yourself an expert</p> <p>5 in analyzing and assessing company reputations?</p> <p>6 A. Reputation, hm. To the extent -- to</p> <p>7 the extent -- and don't go back to the</p> <p>8 defamation part. To the extent that these</p> <p>9 acts, like, that they impact the financial</p> <p>10 condition of the company, yes, I am an expert</p> <p>11 in that. But as far as defamatory statement</p> <p>12 itself, no.</p> <p>13 And what was your last question?</p> <p>14 What was the question?</p> <p>15 Q. The question was: Do you consider</p> <p>16 yourself an expert in analyzing and assessing</p> <p>17 company reputations?</p> <p>18 A. I -- I would say if -- I can see --</p> <p>19 and I am an expert on looking at the impact of</p> <p>20 changes of reputation. If a business is --</p> <p>21 they -- they engage in things that -- that hurt</p> <p>22 their own reputation, I can see the results of</p>	<p style="text-align: right;">Page 127</p> <p>1 correct?</p> <p>2 MR. KACHOUROFF: Objection to form.</p> <p>3 Relevance.</p> <p>4 THE WITNESS: So as a daily matter,</p> <p>5 I don't assess the reputations of companies.</p> <p>6 I -- I do look at how reputations may be</p> <p>7 changed and -- and the impact that has on the</p> <p>8 financial conditions and performance of</p> <p>9 companies. Yes, I do that all the time.</p> <p>10 BY MR. LETKEWICZ:</p> <p>11 Q. Do you -- do you consider yourself</p> <p>12 an expert in assessing whether or not a</p> <p>13 company's reputation is good or bad or what</p> <p>14 factors someone might look at in determining</p> <p>15 whether or not a company has a good or bad</p> <p>16 reputation?</p> <p>17 A. Is there -- is there such a</p> <p>18 certification for that kind of thing?</p> <p>19 MR. KACHOUROFF: I'm going to object</p> <p>20 -- I'm going to --</p> <p>21 I'm sorry, Robert.</p> <p>22 I'm going to -- I'm going to object</p>
<p style="text-align: right;">Page 126</p> <p>1 that in the financial statements. So I am an</p> <p>2 expert on that from that aspect of it.</p> <p>3 But -- but as far as just my -- no,</p> <p>4 I am not an expert in just assessing</p> <p>5 reputation, you know, or -- or market or</p> <p>6 defamation. I mean, there are a lot of people</p> <p>7 that want to go do that, and -- and I think</p> <p>8 they -- they do that at their own peril. It --</p> <p>9 to the extent it ties to the money side of it,</p> <p>10 I'm an expert.</p> <p>11 And a lot of the people who just</p> <p>12 talk about reputation and marketing and</p> <p>13 defamation, they don't know that side of it.</p> <p>14 They may know the reputation side. They may</p> <p>15 know the marketing side. They may know the</p> <p>16 defamatory statement side, but they -- they</p> <p>17 don't know the financial impact side, so I know</p> <p>18 the financial impact side.</p> <p>19 Q. So just to -- just the short summary</p> <p>20 of the answer you gave is you do not consider</p> <p>21 yourself an expert in assessing the reputation</p> <p>22 of a company or the market of a company,</p>	<p style="text-align: right;">Page 128</p> <p>1 to form on that one as well. Sorry.</p> <p>2 BY MR. LETKEWICZ:</p> <p>3 Q. I am asking: Do you consider --</p> <p>4 A. Who is -- who would you consider --</p> <p>5 who would you consider an expert in that area?</p> <p>6 There is no accreditation for that.</p> <p>7 Q. Okay. So you don't consider</p> <p>8 yourself an expert in that?</p> <p>9 A. I think you're just trying to --</p> <p>10 MR. KACHOUROFF: Objection. I don't</p> <p>11 think he understands the question.</p> <p>12 THE WITNESS: Yeah. I think I</p> <p>13 answered that.</p> <p>14 To the extent -- again, to the</p> <p>15 extent it impacts -- if it impacts the</p> <p>16 financial condition of the company -- my career</p> <p>17 has been built on trying to find the root</p> <p>18 cause, including defamatory statements,</p> <p>19 reputation, yes.</p> <p>20 I have to do that for -- for Chase</p> <p>21 and Fannie Mae. If somebody gets into trouble,</p> <p>22 the company does some stupid stuff, I have to</p>

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<p style="text-align: right;">Page 129</p> <p>1 report on that. I have to tell them, well,</p> <p>2 that had an adverse impact on you own</p> <p>3 operations, guys. And I have to quantify that.</p> <p>4 BY MR. LETKEWICZ:</p> <p>5 Q. Other than this case and the liquor</p> <p>6 store case, you have not worked on any other</p> <p>7 case or matter involving a defamation claim,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Do you consider yourself an expert</p> <p>11 in analyzing the market for voting machines or</p> <p>12 election products and services?</p> <p>13 A. No.</p> <p>14 MR. KACHOUROFF: Objection to form.</p> <p>15 BY MR. LETKEWICZ:</p> <p>16 Q. Do you consider yourself an expert</p> <p>17 in EAC certification standards?</p> <p>18 A. No.</p> <p>19 Q. Do you consider yourself an expert</p> <p>20 in what jurisdictions require EAC</p> <p>21 certifications and which ones do not?</p> <p>22 A. I am knowledgeable in those, but I</p>	<p style="text-align: right;">Page 131</p> <p>1 don't -- a lot of this time can be truncated.</p> <p>2 You've gone over -- you've spent two hours on</p> <p>3 literally not talking about the report. I</p> <p>4 get -- I understand what you are trying to do,</p> <p>5 but in terms of paying his bill, I am paying</p> <p>6 his bill apparently. So we need to talk about</p> <p>7 that offline.</p> <p>8 MR. LETKEWICZ: Okay. Well, so,</p> <p>9 Chris, I am entitled to seven hours under the</p> <p>10 rules. How I spend my seven --</p> <p>11 MR. KACHOUROFF: I didn't say you</p> <p>12 weren't. I didn't say you weren't. If you</p> <p>13 want to use the full seven hours, sure. You</p> <p>14 can have the full seven hours. I am not</p> <p>15 debating that at all.</p> <p>16 Is it necessary to do the full seven</p> <p>17 hours? That's really what I am asking you. So</p> <p>18 I want to be able to plan my day, and if that's</p> <p>19 what it's going to be, then that's what it is.</p> <p>20 MR. LETKEWICZ: Right now I would</p> <p>21 say it's -- yeah. I mean, again, I don't have</p> <p>22 a magic ball. It could take the full seven</p>
<p style="text-align: right;">Page 130</p> <p>1 not an expert in those.</p> <p>2 Q. Do you consider yourself an expert</p> <p>3 in the procurement of election products and</p> <p>4 services?</p> <p>5 A. No.</p> <p>6 Q. Do you consider yourself an expert</p> <p>7 in the elections products and services market?</p> <p>8 A. No.</p> <p>9 MR. LETKEWICZ: All right. So we</p> <p>10 have been going about an hour 20. I have -- I</p> <p>11 think my next line of questions is probably</p> <p>12 going to take 15, 20 minutes. So if you're</p> <p>13 good to go -- keep going, we can keep going,</p> <p>14 but if you want to break, that's fine too.</p> <p>15 THE WITNESS: I'm okay.</p> <p>16 MR. KACHOUROFF: How long do you</p> <p>17 plan on going today, Chris?</p> <p>18 MR. LETKEWICZ: Well, I mean, we</p> <p>19 will see how long it takes me to get through</p> <p>20 the questions. If it takes the full seven</p> <p>21 hours, it takes the full seven hours.</p> <p>22 MR. KACHOUROFF: Okay. Because I</p>	<p style="text-align: right;">Page 132</p> <p>1 hours.</p> <p>2 MR. KACHOUROFF: Okay. Mr. Bowes,</p> <p>3 do you want to keep going, or do you want to --</p> <p>4 THE WITNESS: I'm okay to go another</p> <p>5 15 or 20 if that's the next segment.</p> <p>6 And I would think for everybody's</p> <p>7 interest in time, you know, not trying to,</p> <p>8 like -- I would say trying to, like, tweak and</p> <p>9 reask the same questions over and over again is</p> <p>10 not helpful to anybody. So if we can just get</p> <p>11 right to the cheese here, that would be better,</p> <p>12 frankly.</p> <p>13 BY MR. LETKEWICZ:</p> <p>14 Q. Now, let's go back for a moment.</p> <p>15 A. After saying that now you want to go</p> <p>16 back and ask the same questions over again.</p> <p>17 Come on. These are -- these are reach</p> <p>18 questions too in my opinion. But go ahead.</p> <p>19 Q. All right. Let's -- we'll go --</p> <p>20 we'll go to your report here, and if you could</p> <p>21 go to Paragraph 17.</p> <p>22 A. Okay. I'm there.</p>

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<p style="text-align: right;">Page 133</p> <p>1 Q. And in Paragraph 17, you write:</p> <p>2 "The defendants asked me to prepare a rebuttal</p> <p>3 report of my detailed financial analysis as</p> <p>4 well as to conduct a root cause analysis of</p> <p>5 what really happened inside Smartmatic in t</p> <p>6 period from 2018 to 2022."</p> <p>7 Do you see that?</p> <p>8 A. Oh, yeah. So --</p> <p>9 Q. And --</p> <p>10 A. -- 17 just, you know, if you want to</p> <p>11 -- everybody can see it, so do you want to read</p> <p>12 everything all over again, or what?</p> <p>13 Q. Sir, this deposition is going to go</p> <p>14 a lot faster if you don't have commentary for</p> <p>15 all my questions. Okay.</p> <p>16 A. It's going to go a lot faster if you</p> <p>17 don't repeat stuff and read stuff that's</p> <p>18 obvious.</p> <p>19 Q. What standard --</p> <p>20 A. I see it. I wrote it.</p> <p>21 Q. Are you done with your commentary,</p> <p>22 sir?</p>	<p style="text-align: right;">Page 135</p> <p>1 at cash source to uses, looking at changes in</p> <p>2 debt and equity. It's -- it just -- it goes on</p> <p>3 and on. I mean, it's, like -- it's -- it's --</p> <p>4 I guess the simplest way is it's standard</p> <p>5 credit and financial analysis.</p> <p>6 Q. And can those factors that you just</p> <p>7 delineated, be found in any textbook, treatise,</p> <p>8 or authoritative source?</p> <p>9 MR. KACHOUROFF: Objection.</p> <p>10 THE WITNESS: So there are textbooks</p> <p>11 written about credit analysis and financial</p> <p>12 statement analysis. I don't remember their</p> <p>13 names. I have read them. I just don't</p> <p>14 remember. It is been decades. I have been</p> <p>15 applying them.</p> <p>16 BY MR. LETKEWICZ:</p> <p>17 Q. In forming your opinions, did you</p> <p>18 speak with anyone at Smartmatic's competitors?</p> <p>19 A. No.</p> <p>20 Q. Did you speak with anyone who</p> <p>21 currently works at or previously worked at a</p> <p>22 government body that considered procuring or</p>
<p style="text-align: right;">Page 134</p> <p>1 A. What's that?</p> <p>2 Q. Do you have more commentary on the</p> <p>3 question?</p> <p>4 A. You asked me if I see 17. I see it.</p> <p>5 I wrote it. It's right there. Why read it?</p> <p>6 Q. Okay. What standards or methodology</p> <p>7 did you use to conduct a root cause analysis?</p> <p>8 A. The core financial analysis and</p> <p>9 credit analysis that I was taught at two banks</p> <p>10 and at a major mortgage guarantee company.</p> <p>11 Q. And what were these core credit</p> <p>12 financial analyses that you did?</p> <p>13 A. So it's spreading out the numbers,</p> <p>14 laying them in consistent form, looking at</p> <p>15 trends, looking at changes among them, proofing</p> <p>16 them to make sure they are right, applying the</p> <p>17 accounting standards to see if they're right,</p> <p>18 what -- what accounting standards are applied,</p> <p>19 seeing if -- if management's footnotes</p> <p>20 accurately depict what is going on in the</p> <p>21 company or not, looking at the way entities are</p> <p>22 consolidated with -- with affiliates, looking</p>	<p style="text-align: right;">Page 136</p> <p>1 procured voting machines in forming your</p> <p>2 opinions in this case?</p> <p>3 A. No.</p> <p>4 Q. Did you speak with anyone who</p> <p>5 currently works at or previously worked at a</p> <p>6 government body that procures election products</p> <p>7 or services or manages elections in forming</p> <p>8 your opinions in this case?</p> <p>9 A. No.</p> <p>10 Q. Did you speak with anyone who is</p> <p>11 currently or previously an election government</p> <p>12 official in forming any of your opinions in</p> <p>13 this case?</p> <p>14 A. Not -- not related to this case, no.</p> <p>15 Q. Did you speak with Mr. Lindell in</p> <p>16 forming any of your opinions in this case?</p> <p>17 A. No, not at all.</p> <p>18 Q. And other than counsel, have -- did</p> <p>19 you speak with anyone in forming your opinions</p> <p>20 in this case?</p> <p>21 A. No.</p> <p>22 Q. Were you provided any assumptions by</p>

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<p style="text-align: right;">Page 137</p> <p>1 Mr. Lindell's counsel to take into account when</p> <p>2 performing your work on your report?</p> <p>3 A. No. I was not --</p> <p>4 Q. Were you --</p> <p>5 A. -- boxed in, not constrained. It</p> <p>6 was just applied science.</p> <p>7 Q. So you were not then assuming</p> <p>8 liability for any of your opinions in this</p> <p>9 case?</p> <p>10 A. Am I assuming liability --</p> <p>11 Q. Yes.</p> <p>12 A. -- is that your -- why would -- why</p> <p>13 would there be any liability? What is that --</p> <p>14 what is that supposed to mean?</p> <p>15 Q. So do you understand that in a civil</p> <p>16 case that if the defendant is found liable,</p> <p>17 then you look at whether or not the defendant</p> <p>18 has to pay damages to the claimant?</p> <p>19 Do you understand that?</p> <p>20 A. Oh, I thought you were talking about</p> <p>21 my being liable.</p> <p>22 Q. No.</p>	<p style="text-align: right;">Page 139</p> <p>1 opinions about it based on the financial</p> <p>2 analysis, but I -- I have not been -- I guess</p> <p>3 not been asked to provide those so...</p> <p>4 Q. Are you assuming that Smartmatic USA</p> <p>5 is the only Smartmatic entity claiming damages?</p> <p>6 A. I -- I have been informed that that</p> <p>7 was agreed to as such.</p> <p>8 MR. KACHOUROFF: Let me get on the</p> <p>9 record -- I'm sorry, Chris, to interrupt. But</p> <p>10 this is perhaps where you-all can elucidate --</p> <p>11 my last understanding -- and I told my</p> <p>12 expert -- was that you-all had jettisoned the</p> <p>13 Attachment A, which was a damage -- the</p> <p>14 international damages chart for the foreign</p> <p>15 plaintiffs in this case.</p> <p>16 Without that, I have asked what were</p> <p>17 the damages then that remain for the foreign</p> <p>18 plaintiffs. I haven't heard any, and I was</p> <p>19 hoping that you could put on the record now</p> <p>20 what those damages are so that we could address</p> <p>21 those -- those issues.</p> <p>22 MR. LETKEWICZ: Well, the focus of</p>
<p style="text-align: right;">Page 138</p> <p>1 A. Okay. Can you reclarify your</p> <p>2 question then.</p> <p>3 Q. Sure. Are you assuming that Mr.</p> <p>4 Lindell and/or My Pillow will be found liable</p> <p>5 in this case?</p> <p>6 A. No, I am not assuming that.</p> <p>7 Q. Are you offering an opinion on the</p> <p>8 liability of Mr. Lindell and/or My Pillow?</p> <p>9 A. Yes.</p> <p>10 Q. And where in your report can I find</p> <p>11 your opinion on liability?</p> <p>12 MR. KACHOUROFF: I'm going to object</p> <p>13 to the question as to form. You are asking him</p> <p>14 to -- I don't think he understands the</p> <p>15 question, but I can tell you we're not -- we're</p> <p>16 not offering him as a witness on liability.</p> <p>17 MR. LETKEWICZ: Okay.</p> <p>18 BY MR. LETKEWICZ:</p> <p>19 Q. So you're -- so you're not intending</p> <p>20 to offer an opinion on liability then; is that</p> <p>21 correct?</p> <p>22 A. I have -- I have developed my own</p>	<p style="text-align: right;">Page 140</p> <p>1 the deposition is Mr. Bowes' deposition, so</p> <p>2 that's what we're going to focus on right now.</p> <p>3 MR. KACHOUROFF: Correct. We can't</p> <p>4 answer your questions in this deposition</p> <p>5 without knowing what are the damages being</p> <p>6 claimed. I have asked several times. The only</p> <p>7 response that I have gotten from you-all is</p> <p>8 lost profits through their ownership of</p> <p>9 Smartmatic USA. If that's what it is, that's</p> <p>10 what we're going to proceed on.</p> <p>11 MR. LETKEWICZ: Let's go to the next</p> <p>12 question.</p> <p>13 BY MR. LETKEWICZ:</p> <p>14 Q. Do you offer an opinion in either</p> <p>15 your September 22nd or July 9th reports whether</p> <p>16 Mr. Lindell's statements caused financial harm</p> <p>17 to Smartmatic?</p> <p>18 A. The Gorowsky report, I believe, did</p> <p>19 not address that, and my July 9th report, I</p> <p>20 have -- I have my own view about that. I --</p> <p>21 I -- my opinions did not list that</p> <p>22 specifically.</p>

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<p style="text-align: right;">Page 141</p> <p>1 Q. Can you go to Page 21 of your 2 report. 3 A. Okay. I'm there. 4 Q. And toward the bottom, about halfway 5 down that last paragraph: "One is left only to 6 opine." 7 Do you see that? 8 A. I see that. 9 Q. And toward the end of that line, it 10 says: "Smartmatic's allegations that it could 11 have been great if only this or that had 12 happened or only if someone had not said mean 13 things about voting machines is absolutely 14 unfounded as there is no link between Mr. 15 Lindell's statements and Smartmatic's 16 systematic business failure." 17 That's your opinion in this case, 18 correct? 19 A. (No response.) 20 Q. Do you need me to repeat my 21 question, sir? 22 A. I think I answered yes in the</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. So the base of your opinion -- 2 A. I can go -- I can go further. 3 The -- the company was -- was essentially -- it 4 had no equity. It had negative equity. And 5 its own auditors, I wrote, gave it an 6 opinion -- BDO gave the opinion that this 7 company is not likely to survive 12 months. It 8 had a going concern opinion by its own 9 auditors, and that happened even before -- it 10 had nothing to do with statements by Lindell. 11 So, of course, it's -- it's embedded 12 in my report. They had -- they had product 13 failures on -- on unrelated stuff. \$16 million 14 right off on -- on PPE. I mean, come on. They 15 were under investigation by the DOJ. Mike 16 Lindell didn't cause that. Mike Lindell didn't 17 cause them to go into the PPE business. 18 They were -- they were -- and now I 19 look at the 2023 numbers that are not in this 20 record. It's \$20 million borrowed just to fund 21 you guys, fund the litigation. This is not -- 22 this is not a serious operating company. In</p>
<p style="text-align: right;">Page 142</p> <p>1 affirmative. I'm sorry if you didn't hear me. 2 Did you get that, or is my -- my sound on? 3 Q. Yes. I got it. I got it. 4 A. Okay. 5 Q. And in what section do you discuss 6 that there is no link between Mike Lindell's 7 statements and Smartmatic's business failures? 8 A. Section of what? 9 Q. What section in your report? 10 A. So the -- the other causes were -- 11 were self-inflicted. I refer in -- with Bates 12 stamps on it as well about how the company's 13 own admissions were that it was struggling to 14 get acceptance of its products. So that's a 15 direct -- a direct challenge to the assertion 16 that -- that Lindell's statements were 17 defamatory and caused harm. 18 My view is -- and it's written in 19 this report -- is that the company had its own 20 problems well before even the 2020 election. 21 Those cannot be dismissed as a root cause to 22 their -- to Smartmatic financial difficulties.</p>	<p style="text-align: right;">Page 144</p> <p>1 fact, they're really not operating in the 2 election -- election business anymore. They're 3 in the lawsuit business. It's great for you 4 guys and Reid Hoffman funding you. That's 5 perfect. Nice gig if you can get it. 6 Q. So is your opinion then that 7 Smartmatic's damages are zero in this case, 8 correct? 9 A. I guess if you had to put a number 10 on it. I don't want to put a precise number on 11 it because, frankly, it's -- it's a negative 12 number. It's a negative number. They had 13 negative equity. They had massive losses. 14 They could still continue to have massive 15 losses. There is -- there is nothing 16 substantive left of the company, and that 17 condition was happening even before January of 18 2021. 19 Q. So are you saying then that 20 Smartmatic should be paying Mr. Lindell and My 21 Pillow? Is that what you're trying to say by 22 negative damages?</p>

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<p style="text-align: right;">Page 145</p> <p>1 A. I am not saying that, but -- but to</p> <p>2 -- you know, to avoid losses, maybe they should</p> <p>3 just do as their auditors suggested and just</p> <p>4 wrap up business, and that may save themselves</p> <p>5 some money.</p> <p>6 Q. So you agree that -- it's your</p> <p>7 opinion that Smartmatic has not suffered any</p> <p>8 damage. That's -- that's your ultimate opinion</p> <p>9 in this case, correct?</p> <p>10 A. Well, my ultimate point is they</p> <p>11 have -- they have self-inflicted damages.</p> <p>12 Q. That is not --</p> <p>13 A. The financial condition is obvious.</p> <p>14 They had -- they -- the operating losses -- and</p> <p>15 Gorowsky was absolutely right on this. They</p> <p>16 had massive operating losses. Their cash flows</p> <p>17 were negative. They had to rely on bailouts.</p> <p>18 They had their own auditors</p> <p>19 basically saying, you know, I'm not sure, you</p> <p>20 know, that Smartmatic's top of the house is</p> <p>21 going to continue to fund these large operating</p> <p>22 losses in the United States and we're not sure</p>	<p style="text-align: right;">Page 147</p> <p>1 received some, like, abbreviated version of</p> <p>2 2023, which is even worse. So, yes, I did rely</p> <p>3 on those.</p> <p>4 Q. And -- but the -- you do not -- you</p> <p>5 do not discuss Smartmatic's 2023 financials in</p> <p>6 your report, correct?</p> <p>7 A. I just got them.</p> <p>8 Q. And another one of your reasons that</p> <p>9 Mike Lindell and My Pillow did not cause any</p> <p>10 damages to Smartmatic is your view that</p> <p>11 Smartmatic was outperformed by its competitors</p> <p>12 which, in your view, had superior products and</p> <p>13 were better at capturing government contracts?</p> <p>14 A. Among other reasons, yes.</p> <p>15 Q. And another reason you cite in your</p> <p>16 report are the internal Smartmatic</p> <p>17 communications that you cite and discuss in</p> <p>18 your report, correct?</p> <p>19 A. Correct. Yes.</p> <p>20 Q. And another reason you cite is</p> <p>21 Smartmatic -- Smartmatic's USA's 2020, 2021,</p> <p>22 and 2022 financials do not show any impairment</p>
<p style="text-align: right;">Page 146</p> <p>1 it's going to be a going concern after 12</p> <p>2 months. That happened way before Mike Lindell</p> <p>3 was ever involved in this thing. So these are</p> <p>4 structural, core fundamentals.</p> <p>5 Q. Let's -- very simply, it's your</p> <p>6 opinion that Mike Lindell and My Pillow did not</p> <p>7 cause any financial harm to Smartmatic. That</p> <p>8 is your opinion, correct?</p> <p>9 A. That's my opinion.</p> <p>10 Q. And one of the reasons for your</p> <p>11 opinion is from your review of Smartmatic USA's</p> <p>12 2020 to 2022 financials, correct?</p> <p>13 A. Well, it's all of them. It's -- I</p> <p>14 just even looked through --</p> <p>15 Q. Sir, can we -- I'm just going to</p> <p>16 break this down. Okay?</p> <p>17 A. All right.</p> <p>18 Q. So one of the reasons is the -- that</p> <p>19 you rely on is Smartmatic USA's 2020 through</p> <p>20 2022 financials, correct?</p> <p>21 A. Oh, I -- okay. Yes. In looking at</p> <p>22 2020 through 2022, yes. And now I just</p>	<p style="text-align: right;">Page 148</p> <p>1 of Smartmatic's intangible assets?</p> <p>2 A. Could you repeat that question.</p> <p>3 Q. Sure.</p> <p>4 A. I mean, I got a bit, but yes, they</p> <p>5 do not show impairment. But what was the full</p> <p>6 question?</p> <p>7 Q. Sure. The question is: Another</p> <p>8 reason for your opinion that the defendants did</p> <p>9 not cause Smartmatic any damages is that</p> <p>10 Smartmatic USA's 2020, 2021, and 2022</p> <p>11 financials do not show any impairment of</p> <p>12 Smartmatic's intangible assets, correct?</p> <p>13 A. So just to parse that out. The fact</p> <p>14 that no impairment was taken is not -- had</p> <p>15 there -- had there been a legitimate damage to</p> <p>16 the company, they would have taken impairment</p> <p>17 to their -- to their intellectual property, but</p> <p>18 they did not.</p> <p>19 What I am saying is that they -- if</p> <p>20 this were a legitimate claim -- and I believe</p> <p>21 it's not a legitimate claim of damages for</p> <p>22 defamation. I don't believe it is legitimate.</p>

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<p style="text-align: right;">Page 149</p> <p>1 If it were legitimate, they at least would have</p> <p>2 told their own auditors about it, and the</p> <p>3 auditors had no -- nothing -- the auditors</p> <p>4 didn't do any impairment on their business.</p> <p>5 So I'm not -- the way you asked that</p> <p>6 question, there is not the causation that you</p> <p>7 inferred in your question. I am just saying</p> <p>8 that the accounting standards do not reflect</p> <p>9 damages. They -- they would have and should</p> <p>10 have if that were the case. They should have</p> <p>11 maybe just talked to BDO. Like, hey, we have</p> <p>12 damages. But they didn't.</p> <p>13 They didn't even have a footnote in</p> <p>14 the USA statements about it. The USA</p> <p>15 statements had no footnotes disclosing a</p> <p>16 disinformation campaign. They -- they put this</p> <p>17 at the -- at the parent company. Crazy.</p> <p>18 Q. So, again, if there was, in fact,</p> <p>19 damages, in your view, it would have shown up</p> <p>20 as an impairment on Smartmatic's intangible</p> <p>21 assets for Smartmatic USA, correct?</p> <p>22 A. The proper accounting would have</p>	<p style="text-align: right;">Page 151</p> <p>1 cause damages to Smartmatic is that Smartmatic</p> <p>2 had little deferred revenue after 2020,</p> <p>3 correct?</p> <p>4 A. Again, that's a -- that's a similar</p> <p>5 accounting tell. That indication, that</p> <p>6 actually --</p> <p>7 Q. It's a simple yes or no, sir.</p> <p>8 A. Well, could you ask that -- could</p> <p>9 you ask that again because --</p> <p>10 Q. Absolutely.</p> <p>11 A. -- it's not the --</p> <p>12 Q. I said: Another reason cited in</p> <p>13 your report as to why the defendants did not</p> <p>14 cause Smartmatic any damages is that Smartmatic</p> <p>15 had little deferred revenue after 2020,</p> <p>16 correct?</p> <p>17 A. That's not the way I characterized</p> <p>18 it. So, no, that's not correct. I -- I was</p> <p>19 focusing on the deferred revenues to look at</p> <p>20 what -- what -- what revenues were in the</p> <p>21 pipeline. And I used that to basically</p> <p>22 refute -- I -- I totally refuted these -- the</p>
<p style="text-align: right;">Page 150</p> <p>1 been to show an impairment, and they did not</p> <p>2 use proper accounting. They were using -- they</p> <p>3 certainly weren't using GAAP. They aren't</p> <p>4 using PCAOB U.S. GAAP. They aren't, and that's</p> <p>5 a problem.</p> <p>6 Who knows what's going on in those</p> <p>7 financial statements. Had they done it</p> <p>8 right -- what I am alleging is that -- that</p> <p>9 there is an inconsistency. The company</p> <p>10 should -- if they really thought they were, you</p> <p>11 know, damaged, they would impaired their</p> <p>12 assets, and they did not impair their assets.</p> <p>13 Q. And another reason --</p> <p>14 A. Before -- and that gets right to the</p> <p>15 principles of -- of looking at long-lived</p> <p>16 assets. Are they continuing -- are they</p> <p>17 useful? Are they going to be persistent? Are</p> <p>18 they going to produce revenues? And -- and</p> <p>19 there was no -- there was no change in</p> <p>20 impairment, you know.</p> <p>21 Q. All right. Another reason you cite</p> <p>22 in your report that the defendants did not</p>	<p style="text-align: right;">Page 152</p> <p>1 plaintiffs' purported experts, you know, these</p> <p>2 marketing people trying to tell me about</p> <p>3 financial forecasting. They don't know</p> <p>4 anything about financial forecasting.</p> <p>5 They're trying -- and -- and the</p> <p>6 reason they don't, they would have -- they</p> <p>7 would have looked at what is in the pipeline</p> <p>8 for deferred -- that deferred revenue was</p> <p>9 tailing off. It was -- they were -- they lost</p> <p>10 their L.A. contract, and there were just fumes</p> <p>11 in the tank. So they were in a depletion</p> <p>12 runoff mode because of their -- because of</p> <p>13 their own doing.</p> <p>14 So it's not statements by Mike</p> <p>15 Lindell that did it. Their own contracting was</p> <p>16 drying up, and you could see it in the deferred</p> <p>17 revenues.</p> <p>18 Q. Another reason that you cite that</p> <p>19 defendants did not cause Smartmatic any damages</p> <p>20 was the DOJ investigation, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And another reason you cite that</p>

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<p style="text-align: right;">Page 153</p> <p>1 defendants did not cause Smartmatic USA's --</p> <p>2 strike that.</p> <p>3 Another reason you cite that</p> <p>4 defendants did not cause Smartmatic's --</p> <p>5 Smartmatic any damages is -- was Smartmatic</p> <p>6 USA's efforts to try to sell personal</p> <p>7 protective equipment, correct?</p> <p>8 A. That is a massive impact on the</p> <p>9 company. The \$16 million write-down in their</p> <p>10 failed product line. That had nothing to do</p> <p>11 with --</p> <p>12 Q. And -- I'm sorry. I cut you off.</p> <p>13 You said nothing to do with...?</p> <p>14 A. That decision and the big write-off</p> <p>15 that SGO took had nothing to do with Mike</p> <p>16 Lindell.</p> <p>17 Q. And another reason you cite that</p> <p>18 defendants did not cause Smartmatic any damages</p> <p>19 is that Smartmatic lacks a EAC-certified</p> <p>20 product, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And another reason you cite that</p>	<p style="text-align: right;">Page 155</p> <p>1 got kicked out of Philippines probably had an</p> <p>2 impact on them.</p> <p>3 Q. Anything else?</p> <p>4 A. That's it. Those are the major</p> <p>5 ones.</p> <p>6 MR. LETKEWICZ: All right. Why</p> <p>7 don't we break for lunch. You want to come</p> <p>8 back -- it's in about -- it would be 1:00 my</p> <p>9 time, 2:00 your time. Does that work for you</p> <p>10 guys?</p> <p>11 THE WITNESS: That sounds good.</p> <p>12 THE VIDEOGRAPHER: We are going off</p> <p>13 the record. 12:32 p.m.</p> <p>14 (A short recess was taken.)</p> <p>15 THE VIDEOGRAPHER: We are back on</p> <p>16 the record. 1:02 p.m.</p> <p>17 BY MR. LETKEWICZ:</p> <p>18 Q. Good afternoon, Mr. Bowes.</p> <p>19 Prior to breaking for lunch, we were</p> <p>20 talking about your ultimate opinion in this</p> <p>21 case that defendants did not cause any harm to</p> <p>22 Smartmatic. Do you recall that?</p>
<p style="text-align: right;">Page 154</p> <p>1 defendants did not cause Smartmatic any damages</p> <p>2 is that Smartmatic is focused on lawsuits and</p> <p>3 not its business, correct?</p> <p>4 A. It seems that way to me right now,</p> <p>5 and 2023 just confirmed that.</p> <p>6 Q. All right. We're going to go in a</p> <p>7 little more detail in each of these bases after</p> <p>8 our break but --</p> <p>9 A. Okay.</p> <p>10 Q. -- are there any other bases in</p> <p>11 terms of topics for your opinion that</p> <p>12 defendants did not cause Smartmatic any</p> <p>13 damages?</p> <p>14 A. So I think there are -- there may be</p> <p>15 one or two. The political risk that Smartmatic</p> <p>16 was involved in sort of bit them in the behind,</p> <p>17 particularly in the Philippines. So that --</p> <p>18 that did impact their reputation. It is not</p> <p>19 listed in this, but if I had to be thorough, I</p> <p>20 would say the Philippines stuff -- it's related</p> <p>21 to DOJ obviously, but I think the product</p> <p>22 problems and whatever -- whatever reasons they</p>	<p style="text-align: right;">Page 156</p> <p>1 A. Yes.</p> <p>2 Q. Did you do any analysis as to what</p> <p>3 Smartmatic's damages would be if Smartmatic can</p> <p>4 prove that defendants did not harm Smartmatic?</p> <p>5 A. So that hypothetical doesn't appear</p> <p>6 reasonable to me. You cannot ignore the -- the</p> <p>7 large self-inflicted damage to Smartmatic from</p> <p>8 its own doing. So it's -- it's -- it's sort of</p> <p>9 an academic exercise that's really futile in my</p> <p>10 view.</p> <p>11 Q. So the short answer is you did not</p> <p>12 do any analysis as to what Smartmatic's damages</p> <p>13 could be if Smartmatic could prove defendants</p> <p>14 harmed Smartmatic, correct?</p> <p>15 A. In my view, there aren't any.</p> <p>16 Q. Is the crux of your opinion that</p> <p>17 defendants did not cause harm to Smartmatic?</p> <p>18 A. That's a -- that's a secondary view</p> <p>19 of mine. My primary view is that -- as I</p> <p>20 outlined in the report, that there are all</p> <p>21 these, you know, good half a dozen major</p> <p>22 dysfunctional adverse impacts to Smartmatic</p>

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<p style="text-align: right;">Page 157</p> <p>1 that they had experienced, caused themselves</p> <p>2 that dwarf anything that -- anybody making a</p> <p>3 statement. Any statements couldn't have,</p> <p>4 wouldn't have any impact on the damage that had</p> <p>5 already been inflicted to Smartmatic.</p> <p>6 Q. So you did not do any type of -- so</p> <p>7 it sounds like, though, you did not do a</p> <p>8 hypothetical exercise of what Smartmatic's</p> <p>9 damages would be if Smartmatic can prove at</p> <p>10 trial that Smartmatic -- that the defendants</p> <p>11 harmed Smartmatic. Is that fair to say?</p> <p>12 MR. KACHOUROFF: I'm going to object</p> <p>13 to form.</p> <p>14 But go ahead.</p> <p>15 THE WITNESS: So this is -- this is</p> <p>16 an easy one because the company was already --</p> <p>17 the resources had already been depleted. The</p> <p>18 revenues were drying up even before early 2021.</p> <p>19 And now the business is totally</p> <p>20 different than what it was. It is not</p> <p>21 operating as an election company anymore. It's</p> <p>22 operating as a lawsuit company.</p>	<p style="text-align: right;">Page 159</p> <p>1 but can you confirm your answer is no?</p> <p>2 MR. KACHOUROFF: I'm going to object</p> <p>3 because he has already answered this question.</p> <p>4 He already said he can't determine damages even</p> <p>5 if Smartmatic could -- I will let him answer</p> <p>6 that, but I am objecting to that question to</p> <p>7 form, and also he's asked and answered it</p> <p>8 already.</p> <p>9 MR. LETKEWICZ: All right. Yeah. I</p> <p>10 don't need the speaking --</p> <p>11 THE WITNESS: So let me just say</p> <p>12 that had -- had none of those prior, what I</p> <p>13 call, self-inflicted damages occurred for --</p> <p>14 for product, for pricing, you know, for</p> <p>15 integrity issues, you know, drifting in the</p> <p>16 unrelated businesses that were a total failure,</p> <p>17 not having the capital, I -- I can see -- they</p> <p>18 didn't even have the capital to support growth.</p> <p>19 They didn't -- their bondholders were bailing</p> <p>20 out. Their shareholders were -- were bailing</p> <p>21 out. Their board meetings were bailing out</p> <p>22 even before January 2021.</p>
<p style="text-align: right;">Page 158</p> <p>1 And, frankly, we all have -- with</p> <p>2 the benefit of the passage of time here, now we</p> <p>3 have -- the hindsight is really crisp to us</p> <p>4 that in -- in 2021, 2022, 2023, and even seeing</p> <p>5 some of the stuff with Smartmatic right now in</p> <p>6 2024, it just confirms what I am saying that</p> <p>7 the -- that the damage was self-inflicted</p> <p>8 before January 2021. It's not salvageable, and</p> <p>9 you can -- you can -- sure, you can create all</p> <p>10 these hypothetical, theoretical things, but</p> <p>11 they are not reasonable. They are not likely.</p> <p>12 There is no -- there is no expectation of them.</p> <p>13 So it's a futile -- it's a futile exercise.</p> <p>14 BY MR. LETKEWICZ:</p> <p>15 Q. I understand, sir, it's your opinion</p> <p>16 it's a futile exercise.</p> <p>17 My question was a very simple</p> <p>18 question. My question was: Did you do any</p> <p>19 analysis as to what Smartmatic's damages would</p> <p>20 be if -- if Smartmatic can prove that</p> <p>21 defendants harmed Smartmatic? It sounds like</p> <p>22 based on your prior testimony the answer is no,</p>	<p style="text-align: right;">Page 160</p> <p>1 So none of the ingredients were</p> <p>2 conducive to even having these wildly</p> <p>3 fantastical ideas of actually having a real</p> <p>4 business. They don't have a real business.</p> <p>5 It's gone. So -- okay.</p> <p>6 But -- but let's just -- just play</p> <p>7 the game here. Suppose none of those things</p> <p>8 had happened and it was a -- it was an</p> <p>9 operational persistency driven business. Then</p> <p>10 I would have looked at any impact from</p> <p>11 defamatory statements, but because those things</p> <p>12 were so disqualifying, there is no -- there is</p> <p>13 no reasonable, logical way to move forward</p> <p>14 because the impacts of the self-inflicted</p> <p>15 damages are just so -- so finite and terminal.</p> <p>16 BY MR. LETKEWICZ:</p> <p>17 Q. Right. So the focus of your</p> <p>18 analysis was whether or not the defendants</p> <p>19 caused harm to Smartmatic. Is that fair to</p> <p>20 say?</p> <p>21 A. No, that's not fair to say.</p> <p>22 Q. Okay. But your -- your ultimate</p>

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<p style="text-align: right;">Page 161</p> <p>1 opinion, though, is that the defendants did not</p> <p>2 cause harm to Smartmatic, correct?</p> <p>3 A. Yes. Because the harm was</p> <p>4 self-inflicted and it was terminal. This was a</p> <p>5 runoff operation that was struggling, failing.</p> <p>6 Nothing in the tank even before January 2021.</p> <p>7 We have the passage of time. We can see it.</p> <p>8 It's clear.</p> <p>9 Q. You've used -- you said it was a</p> <p>10 runoff operation. Is that a finance term of</p> <p>11 art?</p> <p>12 A. It is. It is.</p> <p>13 Q. When --</p> <p>14 A. Particular for insurance --</p> <p>15 insurance companies when they -- when they</p> <p>16 cease or slow down or -- or exit a line of</p> <p>17 business. They consider that to be in a runoff</p> <p>18 mode, meaning they sort of just work through</p> <p>19 the pipeline of any prior contracts, and then</p> <p>20 they sort of shut that line down or shut the</p> <p>21 whole company down.</p> <p>22 Smartmatic was in runoff, runoff</p>	<p style="text-align: right;">Page 163</p> <p>1 statements. BDO wrote it clearly in their</p> <p>2 opinion that this -- they issued a going</p> <p>3 concern opinion, and they can look at that in</p> <p>4 the AICPA as well. When they -- the reason</p> <p>5 they put a going concern opinion on is because</p> <p>6 they believed that this company wasn't going to</p> <p>7 make it past 12 months.</p> <p>8 Q. Okay. Now, isn't it in fact true</p> <p>9 that Smartmatic -- strike that.</p> <p>10 Before I get to -- if I can direct</p> <p>11 your attention to Page 17 of your report.</p> <p>12 A. Okay. Hold on.</p> <p>13 Okay. I'm there.</p> <p>14 Q. And in G the title of that section</p> <p>15 is: "Auditor BDO Unable to Issue a Clean</p> <p>16 Opinion Citing Risk of SUSA Failure."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And what do you mean by "clean</p> <p>20 opinion"?</p> <p>21 A. Okay. So a clean opinion would not</p> <p>22 have any -- any material adverse comments, like</p>
<p style="text-align: right;">Page 162</p> <p>1 mode definitely.</p> <p>2 Q. Where -- can you tell me where I can</p> <p>3 find a definition of runoff?</p> <p>4 A. Sure. Try -- let's see. The NAIC,</p> <p>5 like, the National Association of Insurance</p> <p>6 Commissioners, they probably have a whole book</p> <p>7 on runoff, so NAIC.</p> <p>8 Q. And you understand, sir, this is not</p> <p>9 an insurance case, correct?</p> <p>10 A. I -- I -- I totally get that, yes.</p> <p>11 Q. And you also said that it was</p> <p>12 terminal. Is -- is terminal a term of art in</p> <p>13 finance?</p> <p>14 A. No. That's more like in medicine.</p> <p>15 The company was dying.</p> <p>16 Q. Okay. And is that -- is there any</p> <p>17 type of -- can you tell me any type of source</p> <p>18 I -- I can go to to what factors I would look</p> <p>19 at in terms of whether or not a company is</p> <p>20 "dying"?</p> <p>21 A. Sure. It's right -- it's right in</p> <p>22 front of you on the Smartmatic USA financial</p>	<p style="text-align: right;">Page 164</p> <p>1 a going concern opinion. If -- if BDO had</p> <p>2 issued a clean opinion, then they would not</p> <p>3 have included the view that the company was --</p> <p>4 had a risk of failure within 12 months.</p> <p>5 So it's basically -- that's a -- I</p> <p>6 guess it's a colloquial -- in the accounting</p> <p>7 world, a clean opinion is everything is</p> <p>8 hunky-dory, all is fine, and there's no issues.</p> <p>9 But a nonclean opinion includes things like</p> <p>10 material adverse changes or going concern</p> <p>11 caveats that -- that the auditors are required</p> <p>12 to put -- put on -- on the financial</p> <p>13 statements.</p> <p>14 Q. Isn't it true that BDO issued a</p> <p>15 clean audit opinion for Smartmatic USA's 2021</p> <p>16 financials?</p> <p>17 A. They did not.</p> <p>18 Q. Isn't it true that BDO, in</p> <p>19 connection with Smartmatic USA's 2021</p> <p>20 financials, concluded that Smartmatic USA would</p> <p>21 continue as a going concern?</p> <p>22 A. They -- they did not. They had the</p>

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<p style="text-align: right;">Page 165</p> <p>1 risk of failure.</p> <p>2 Q. And isn't it true that BDO issued a</p> <p>3 clean audit opinion for Smartmatic USA's 2022</p> <p>4 financials?</p> <p>5 A. Not true. Where do you see that?</p> <p>6 Show -- show them to me. It's -- it's clear</p> <p>7 there is a -- they cite the risk of failure in</p> <p>8 all those years. Did they -- did they go back</p> <p>9 and revise their statements and I don't know</p> <p>10 about it?</p> <p>11 Q. Isn't it true that BDO concluded, in</p> <p>12 connection with Smartmatic USA's 2022</p> <p>13 financials, that Smartmatic USA management has</p> <p>14 continued to take actions to ensure that</p> <p>15 Smartmatic USA would continue as a going</p> <p>16 concern?</p> <p>17 A. They -- they said -- they said that</p> <p>18 the company still faced a risk of large -- they</p> <p>19 had a negative net worth. Large and continuing</p> <p>20 operating cash losses as well as uncertainty</p> <p>21 about the risks of the parent company and</p> <p>22 creditors funding the operation.</p>	<p style="text-align: right;">Page 167</p> <p>1 "Opinion."</p> <p>2 A. Uh-huh. I see that.</p> <p>3 Q. Before I get to that, you had</p> <p>4 indicated earlier that Smartmatic doesn't use</p> <p>5 GAAP or IFRS. Do you recall that?</p> <p>6 A. Yes, I recall that.</p> <p>7 Q. And you stand by that testimony?</p> <p>8 A. I do.</p> <p>9 Q. All right. And if -- so let's go</p> <p>10 to page -- so Page 3. In the second paragraph,</p> <p>11 it states: "In our opinion, the accompanying</p> <p>12 financial statements present fairly, in all</p> <p>13 material respects, the financial position of</p> <p>14 the company as of December 31, 2021, and the</p> <p>15 results of its operations and its cash flows</p> <p>16 for the year then ended, including the required</p> <p>17 comparative information, in accordance" with --</p> <p>18 "accordance International Financial Reporting</p> <p>19 Standards as issued by the International</p> <p>20 Accounting Standards Board and interpretations,</p> <p>21 collectively IFRS."</p> <p>22 Do you see that?</p>
<p style="text-align: right;">Page 166</p> <p>1 So no. You might be citing a</p> <p>2 sentence, but that directly conflicts with</p> <p>3 the -- the obvious, glaring opinion that BDO</p> <p>4 said there is a going -- there is a concern</p> <p>5 about this -- the company's ability to operate.</p> <p>6 MR. LETKEWICZ: Put Tab 15 in the</p> <p>7 chat, and this will be marked as Plaintiff's</p> <p>8 Exhibit 676.</p> <p>9 (Deposition Exhibit 676 was marked</p> <p>10 for identification.)</p> <p>11 BY MR. LETKEWICZ:</p> <p>12 Q. And then let me know when you have</p> <p>13 that open.</p> <p>14 A. Okay. Opening now. Okay. Go</p> <p>15 ahead.</p> <p>16 Q. And Plaintiffs' Exhibit 676 is</p> <p>17 Smartmatic USA's financial statements for the</p> <p>18 year ending December 31, 2021, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And if you could please go to at</p> <p>21 least Page 4 of the PDF but it's listed as Page</p> <p>22 3. You should see a section that's entitled:</p>	<p style="text-align: right;">Page 168</p> <p>1 A. I do see that.</p> <p>2 Q. And that is a clean audit opinion,</p> <p>3 correct?</p> <p>4 A. No, it's not. Go to --</p> <p>5 Q. Why not?</p> <p>6 A. Go to the next page. Top -- top --</p> <p>7 right below that, going concern. This is not</p> <p>8 clean. As discussed --</p> <p>9 Q. And -- go ahead. Finish your</p> <p>10 answer.</p> <p>11 A. That -- read -- read the paragraph</p> <p>12 at the top of what is marked as Page 4.</p> <p>13 They -- they talk about going concern opinion,</p> <p>14 and -- and -- and then they also say that the</p> <p>15 basis of their opinion is -- is used -- using</p> <p>16 GAAS, not IFRS.</p> <p>17 Q. It is talking about GAAS. It's</p> <p>18 talking about the audit BDO has conducted,</p> <p>19 right?</p> <p>20 A. Correct.</p> <p>21 Q. It's not talking about how</p> <p>22 Smartmatic kept its financials, correct?</p>

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<p style="text-align: right;">Page 169</p> <p>1 A. So the -- the required comparative 2 information was produced under IFRS, but they 3 took management's preparation, and that is 4 using GAAS. 5 Q. Right. I understand they did it as 6 part of the audit, but Smartmatic did their 7 financials in accordance with IFRS, correct? 8 A. Well, if you just -- the sentence -- 9 I'll just take the sentence as it's written. 10 They used it for comparative information. 11 Q. So based on that sentence, it's your 12 opinion then that Smartmatic did not maintain 13 its financials in accordance with IFRS. Is 14 that what you're saying? 15 A. They say they certainly did not use 16 GAAP. Okay. There is nothing about GAAP in 17 there. They -- they have a reference to IFRS. 18 It's only with respect to the comparative 19 information. There is nothing directly stating 20 that they used IFRS in the presentation in -- 21 of their financials. 22 So this is -- this is a very tricky</p>	<p style="text-align: right;">Page 171</p> <p>1 A. Of course. That doesn't make them 2 better than U.S. GAAP. U.S. GAAP is the best. 3 Okay. 4 Q. And -- and what is your basis for 5 U.S. GAAP being better than IFRS? 6 A. Because it -- there are a whole -- a 7 whole array of weaknesses in IFRS. Again, 8 U.S. -- U.S. Public Company Accounting 9 Oversight Board, GAAP is the best measure of 10 financial statement presentation in the world. 11 IFRS is a weak -- is a weak second. 12 Q. Are you -- are you aware, though, 13 sir, that more than 500 foreign SEC registrants 14 use IFRS standards in their U.S. filings? 15 A. I'm not -- I'm not aware of that. 16 I'm sure there are those that use them. I know 17 that the -- the -- the registration rules have 18 gotten -- they're not -- they're not as strong 19 as they once were. So it's actually a systemic 20 risk of the capital markets in our country that 21 we allow that to happen. 22 Q. And are you aware of any statute,</p>
<p style="text-align: right;">Page 170</p> <p>1 opinion. It's not clean. And -- and, further, 2 it's not clean because of the going concern 3 issues and the significant customer issue 4 they -- they cite on the next page. 5 But no. I understand your point. 6 Thank you for pointing out that IFRS reference, 7 but that does not directly answer the question 8 about what type of audit -- what standards they 9 applied to the preparation of their financial 10 settlements. 11 And they're -- this is not -- the 12 biggest thing is they're not -- this is not 13 GAAP at all. This is nonGAAP. So it is 14 missing out on a lot of important things 15 that -- that, you know, capital markets and -- 16 and regulars want in the United States. 17 They -- these are -- these are -- this is a -- 18 a weak secondary auditing standard and weak 19 secondary financial statements. 20 Q. Are you aware, sir, that 21 international finance reporting standards are 22 required in over 140 countries?</p>	<p style="text-align: right;">Page 172</p> <p>1 regulation, or rule that bars a company from 2 using IFRS standards for accounting instead of 3 GAAP? 4 A. Now, again, this -- this opinion 5 does not say that they used IFRS -- 6 Q. Sir, focus on my question. My 7 question was -- 8 A. I am. I am. 9 Q. Okay. So my question was: Are you 10 aware of a rule, regulation, or statute that 11 bars a company from using IFRS accounting 12 instead of GAAP accounting? 13 A. We had -- yes. Yes, I am. We had 14 that in -- 15 Q. Okay. 16 A. -- in financial -- financial 17 standards and eligibility all throughout the 18 United States through our mortgage markets, 19 through our financial markets. U.S. -- 20 U.S.-regulated institutions cannot use IFRS. 21 It's deficient. 22 So yes. FDIC, OCC, all -- all the</p>

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<p style="text-align: right;">Page 173</p> <p>1 mortgage market -- Dodd-Frank. It has got U.S. 2 PCAOB, GAAP. IFRS is a weak -- is a weak view, 3 and they're not even applying it to their -- 4 the preparation of financial statements. 5 They're just using it for comparative 6 information, so this -- this is secondary. 7 Q. Okay. 8 A. And on top of that, we've got a 9 going concern. You told me that this was a 10 clean opinion. Sir, you are wrong. This is 11 not a clean opinion. They had clearly 12 distinguished a going concern problem in -- in 13 the Smartmatic USA financials. 14 Q. And so what textbook or treatise or 15 authoritative source can I go to that would 16 tell me that if there is a going concern, it's 17 not a clean opinion? 18 A. I'll have to look it up and send it 19 to you. 20 Q. Okay. All right. Let's -- as you 21 talk about that going concern issue, can you 22 please go to -- I believe it's Page 12 of the</p>	<p style="text-align: right;">Page 175</p> <p>1 believes that these actions, along with the 2 support from the ultimate parent, will enable 3 the company to continue as a going concern. 4 So they are saying they are going to 5 continue as a going concern, correct? 6 A. Management is -- did write that, but 7 their auditors did not believe that. 8 If this were so convincing -- and it 9 wasn't -- then BDO wouldn't have put the going 10 concern caveat on here. 11 Q. Okay. So let's go to that. Let's 12 go to -- go to Page 5, going concern. 13 A. Yep. 14 Q. Where does it say that the company 15 is not going to continue as a going concern? 16 A. So this is a red flag warning to 17 creditors, anybody trying to invest in this 18 company, whatever, that there is a risk that 19 this company will not exist in 12 months, 20 within 12 months. 21 Q. But you -- it -- nowhere in this 22 paragraph does it say the company -- there is a</p>
<p style="text-align: right;">Page 174</p> <p>1 PDF, Page 11, and it says in Number 1: "Nature 2 of operations." 3 A. Is this a financial statement you 4 just sent me, the 2021? 5 Q. Yes. Correct. 6 A. Page 12. 7 Q. It's Page 12 of the PDF. It will be 8 Page 11 as indicated on the document. 9 A. Okay. I'm there. Yeah, I'm there. 10 Q. And in the second paragraph, it says 11 that as reflected in the financial statements, 12 the company had approximately \$4,462,980 and 13 \$4,651,858 of net cash used in operating 14 activities for the years ended December 31, 15 2021 and 2020, respectively. Management has 16 continued to take actions to ensure that the 17 company will continue as a going concern, 18 including procuring new contracts in the U.S. 19 SGO Corporation Limited (the ultimate parent) 20 has agreed, if necessary, to fund the company's 21 operations for the foreseeable future, and at 22 least one year from June 23, 2023. Management</p>	<p style="text-align: right;">Page 176</p> <p>1 risk the company will not continue as a going 2 concern. That language cannot be found in that 3 paragraph. You would agree with that? 4 A. You know, I -- I'm going to leave it 5 just like they wrote it. You better ask BDO 6 why they did this. Why don't you ask them? 7 They are required to put it in there 8 if they've got risks of a going concern, and 9 they write it clearly, going concern. So you 10 can try to characterize it all you want, but 11 I'll just leave it to what BDO wrote. 12 Q. But, again, they -- did they not use 13 the term "there is a risk that Smartmatic would 14 not continue as a going concern in the next 12 15 months." That -- that specific language cannot 16 be found in that paragraph? 17 A. So in substance, you're -- you're 18 barking up the wrong tree. 19 So they have to disclose this, and 20 this is such a significant risk they had to 21 disclose it. You know, if you want to quibble 22 over the exact order of the words, technically,</p>

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<p style="text-align: right;">Page 177</p> <p>1 you're right, but substantively, you are wrong.</p> <p>2 Q. Have you ever conducted -- you --</p> <p>3 have you ever conducted an audit of a company,</p> <p>4 sir?</p> <p>5 A. I actually have.</p> <p>6 Q. Okay. And are you a -- you</p> <p>7 indicated earlier you were not a licensed</p> <p>8 C.P.A., correct?</p> <p>9 A. Correct. That doesn't mean I can't</p> <p>10 be an auditor when I'm putting my -- on a</p> <p>11 financial report. I do audit them, yes.</p> <p>12 Q. Okay. And what entities did you do</p> <p>13 audit work for?</p> <p>14 A. So Sunwest Savings Bank and -- I'm</p> <p>15 sorry -- Sunwest Bank and Hancock Savings Bank</p> <p>16 were the two that I was responsible of</p> <p>17 reporting and -- for when I worked as CFO of</p> <p>18 Hovde Capital.</p> <p>19 We were -- we were majority owners</p> <p>20 of those two. Our -- our investment bank owned</p> <p>21 the majority of those banks, so I was -- I was</p> <p>22 the CFO of those two.</p>	<p style="text-align: right;">Page 179</p> <p>1 outside auditors.</p> <p>2 So it's -- it's not exactly as you</p> <p>3 say, but -- so, you know, we -- when we send</p> <p>4 out audit letters on our accounts, it came from</p> <p>5 me. It came from -- you know, we -- we go</p> <p>6 verify our statements, verify our bank</p> <p>7 accounts. We would conduct the auditing</p> <p>8 standards to do that, and then we would turn</p> <p>9 that over and show the auditing file to the</p> <p>10 outside auditors.</p> <p>11 Q. But, again, to be clear, in</p> <p>12 connection with those two banks, you did not</p> <p>13 issue an independent auditor's report, correct?</p> <p>14 A. That's correct. I did not. Right.</p> <p>15 Q. If you can go to page -- one moment.</p> <p>16 A. Same document.</p> <p>17 Q. No. We're going to go back to your</p> <p>18 report.</p> <p>19 A. Okay.</p> <p>20 Q. All right. And I want to go to Page</p> <p>21 21 of your report.</p> <p>22 A. Okay. I'm there.</p>
<p style="text-align: right;">Page 178</p> <p>1 Q. And then did you issue audited</p> <p>2 financials for those two banks?</p> <p>3 A. We had outside auditors issue the</p> <p>4 opinions on them, and I did the internal audits</p> <p>5 to be able to -- be able to present them to our</p> <p>6 outside auditors that they were in compliance</p> <p>7 with U.S. GAAP.</p> <p>8 Q. Okay. And so -- so the nature of</p> <p>9 your work was that you were assisting the</p> <p>10 outside auditors of these two banks, correct?</p> <p>11 A. So not exactly. When you read</p> <p>12 through the opinions, a lot of the auditors</p> <p>13 will say, well, we relied on management and</p> <p>14 what management reported.</p> <p>15 So the first obligation is for</p> <p>16 the -- for the financial execs at the company</p> <p>17 to prepare the financials, and so they're --</p> <p>18 they're on the hook, and they sign it. They --</p> <p>19 when they sign their names, they are now liable</p> <p>20 for any mistake. So the auditing</p> <p>21 responsibility is primarily with the company</p> <p>22 management. Secondly, it's with their</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. And in the first full paragraph, you</p> <p>2 write: "In my professional opinion rendered to</p> <p>3 a reasonable of professional certainty for</p> <p>4 someone in my field, Smartmatic was not a going</p> <p>5 concern in 2020, and it was on the verge of</p> <p>6 going bankrupt."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And isn't it true that Smartmatic</p> <p>10 was, in fact, profitable in 2020?</p> <p>11 A. Let's see. 2020?</p> <p>12 Q. Yes.</p> <p>13 A. I am just looking at my -- my --</p> <p>14 they had net losses in 2020.</p> <p>15 Q. So -- so just to make sure we have a</p> <p>16 clear record, are you looking at Table 1 in</p> <p>17 your report?</p> <p>18 A. Table 3.</p> <p>19 Q. Table 3.</p> <p>20 A. Yeah.</p> <p>21 Q. In Table 3 you indicate that</p> <p>22 Smartmatic USA had net losses of approximately</p>

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<p style="text-align: right;">Page 181</p> <p>1 2.7 million, correct?</p> <p>2 A. That's correct.</p> <p>3 MR. LETKEWICZ: All right. Can you</p> <p>4 put Tab 24 in the chat, and that will be marked</p> <p>5 as Plaintiffs' Exhibit 677.</p> <p>6 (Deposition Exhibit 677 was marked</p> <p>7 for identification.)</p> <p>8 THE WITNESS: Okay.</p> <p>9 BY MR. LETKEWICZ:</p> <p>10 Q. All right. You should have in front</p> <p>11 of you Smartmatic USA Corp. financial</p> <p>12 statements December 31, 2020 and 2019.</p> <p>13 Do you see that?</p> <p>14 A. I see that, yes.</p> <p>15 Q. Okay. Let's go -- all right. Can</p> <p>16 you please go to -- let's see here. It -- I</p> <p>17 don't know what page of the PDF, but it's Page</p> <p>18 5 of the financial statements. You should see</p> <p>19 at the top it says: "Statement of operations</p> <p>20 for the years ending December 31."</p> <p>21 A. I see that.</p> <p>22 Q. Okay. And if you look, there's a --</p>	<p style="text-align: right;">Page 183</p> <p>1 back to your Table 1 on Page 8.</p> <p>2 A. Table 1. Yes.</p> <p>3 Q. And you see that there is a row, net</p> <p>4 cash for operations, and you say in 2022 it was</p> <p>5 approximately a negative 7.8 million, correct?</p> <p>6 A. Yes, I see that.</p> <p>7 Q. Okay. Isn't it true that</p> <p>8 Smartmatic's net cash for operations in 2022</p> <p>9 was actually positive 13.6 million?</p> <p>10 A. I'm not sure.</p> <p>11 Q. Okay.</p> <p>12 A. I believe it was 7.8 -- minus 7.8,</p> <p>13 but --</p> <p>14 Q. Okay.</p> <p>15 A. -- after making that sign -- I have</p> <p>16 to check the cash flow statements for each of</p> <p>17 those years, 2020 and 2022.</p> <p>18 MR. LETKEWICZ: So can you please</p> <p>19 put -- can you put Tab 14 in the chat, please.</p> <p>20 (Deposition Exhibit 678 was marked</p> <p>21 for identification.)</p> <p>22 MR. LETKEWICZ: And for the record,</p>
<p style="text-align: right;">Page 182</p> <p>1 there's a column for 2020. Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. And it shows a gross margin of</p> <p>4 approximately 8.5 million. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And it shows a positive 3.5 million</p> <p>7 of income from operations, correct?</p> <p>8 A. I see that.</p> <p>9 Q. And if you look a little further</p> <p>10 down, it, again, shows a positive 3.5 million</p> <p>11 income before income tax expense, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And then at the bottom, net income</p> <p>14 and total other comprehensive income, it's</p> <p>15 approximately 2.7 million, correct, positive?</p> <p>16 A. That's right. Yes, I do see that.</p> <p>17 Q. So Smartmatic, under any metric,</p> <p>18 Smartmatic USA was profitable in 2020, correct?</p> <p>19 A. Yes. I -- I have to correct that.</p> <p>20 I must have missed a sign on my table, so yes.</p> <p>21 Q. All right. Can we go back to your</p> <p>22 report for a moment, and I actually want to go</p>	<p style="text-align: right;">Page 184</p> <p>1 this will be marked as Plaintiffs' Exhibit 678.</p> <p>2 BY MR. LETKEWICZ:</p> <p>3 Q. Let me know when you have it open.</p> <p>4 A. So are these the same Bates stamp</p> <p>5 numbers that I refer to in my report?</p> <p>6 Q. I am not sure. This is</p> <p>7 SMARTMATIC-LINDELL05358499.</p> <p>8 A. So -- okay. I'm just -- we need to</p> <p>9 just make sure. You want me to open 678?</p> <p>10 Q. Yes.</p> <p>11 A. Okay. I have opened it.</p> <p>12 Q. Okay. And this is Smartmatic USA</p> <p>13 Corp. financial statements year ended December</p> <p>14 31, 2022.</p> <p>15 Do you see that?</p> <p>16 A. Yeah. There is no Bates stamp on</p> <p>17 there, is there?</p> <p>18 Q. If you look -- you should look in</p> <p>19 the lower right-hand corner. You should see</p> <p>20 SMARTMATIC-LINDELL05358499.</p> <p>21 A. 8499. Just to make sure that those</p> <p>22 are -- those are the exact same ones I looked</p>

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<p style="text-align: right;">Page 185</p> <p>1 at before.</p> <p>2 Go ahead.</p> <p>3 Q. All right. And if you could go to</p> <p>4 Page 10, and if you look at -- it should say:</p> <p>5 "Statement of cash flows."</p> <p>6 A. Uh-huh. I see that.</p> <p>7 Q. Okay. And in the middle of that</p> <p>8 page, it says: "Net cash provided by (used in)</p> <p>9 operating activities," and it's a positive 13.6</p> <p>10 million.</p> <p>11 Do you see that?</p> <p>12 A. I see that, yes.</p> <p>13 Q. And it's not a negative 7.8 million,</p> <p>14 correct?</p> <p>15 A. So this is -- the -- the cash flow</p> <p>16 from operating activities is -- is net 6</p> <p>17 million, and so I have to -- I have to check</p> <p>18 this after our call.</p> <p>19 But cash from operating</p> <p>20 activities -- so what you're -- what you're</p> <p>21 pulling out is provided by operations --</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">Page 187</p> <p>1 A. Yep.</p> <p>2 Q. And if you look at 2021.</p> <p>3 A. Uh-huh.</p> <p>4 Q. And it says: "Net cash from</p> <p>5 operations, negative 4.463 million." Do you</p> <p>6 see that?</p> <p>7 A. Yes.</p> <p>8 Q. And if you go back to exhibit --</p> <p>9 A. What year?</p> <p>10 Q. For 2021.</p> <p>11 A. 2021?</p> <p>12 Q. Yes.</p> <p>13 A. Okay.</p> <p>14 Q. So do you see that there it's -- you</p> <p>15 have negative 4.463 million?</p> <p>16 A. I do. I do.</p> <p>17 Q. All right. And if we go back to --</p> <p>18 to Plaintiffs' Exhibit 678 and we look at --</p> <p>19 A. I see it. It matches -- it does</p> <p>20 match. Right. But it's --</p> <p>21 Q. Right.</p> <p>22 A. So here is -- here is where the</p>
<p style="text-align: right;">Page 186</p> <p>1 A. -- it's not the same -- what I am</p> <p>2 referring to. I am referring to the -- the</p> <p>3 cash flow from operations so --</p> <p>4 Q. And so what I am pointing to is</p> <p>5 something different?</p> <p>6 A. Yes, it is different. The 13.6</p> <p>7 includes -- so what -- so what it includes is a</p> <p>8 bunch of money that came in from affiliates.</p> <p>9 Like \$20 million came in from affiliates. So</p> <p>10 that's the difference between the -- between</p> <p>11 the negative 6 or 7 million from the organic</p> <p>12 operations of the company. Your -- your \$13</p> <p>13 million dollar figure includes \$20 million that</p> <p>14 came in from affiliates.</p> <p>15 So -- so in 2022 somebody -- some</p> <p>16 affiliate of Smartmatic USA basically funded</p> <p>17 \$20 million and then made -- made the number</p> <p>18 look good, made it look positive. But I'll</p> <p>19 stand by my negative cash flow from operations</p> <p>20 of 6 or 7 million.</p> <p>21 Q. Yeah. So, actually, can you go back</p> <p>22 to your Table 1.</p>	<p style="text-align: right;">Page 188</p> <p>1 Chase Manhattan Bank credit training kicks in.</p> <p>2 So when you're goosing the numbers by borrowing</p> <p>3 \$20 million from affiliates, you don't count</p> <p>4 that in operating activities. That's -- that</p> <p>5 is -- what I am saying is that \$20 million -- I</p> <p>6 remember seeing this now.</p> <p>7 The 20 million that came in as due</p> <p>8 from related parties and due to related --</p> <p>9 this -- this bolus of money from -- from</p> <p>10 affiliates, you do not count that in operating</p> <p>11 activities. That -- that should have been more</p> <p>12 properly attributed to the next section, cash</p> <p>13 flows from financing activities.</p> <p>14 So I properly adjusted that in 2022</p> <p>15 to say you can't count those. GAAP -- GAAP</p> <p>16 would never let you count that, that money from</p> <p>17 affiliates in cash flow from operations. So</p> <p>18 they -- they didn't get the bolus of money in</p> <p>19 2021. They got a big bolus of money in 2022,</p> <p>20 and that is financing. That is clearly</p> <p>21 financing. Okay. It's not operations.</p> <p>22 So I made that adjustment to come up</p>

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<p style="text-align: right;">Page 189</p> <p>1 with that, so they're -- they -- they -- in</p> <p>2 reality according to GAAP, Smartmatic had the</p> <p>3 cash flow figures that I said.</p> <p>4 I'm going to check that 2021, by the</p> <p>5 way, because I may have had my signs wrong on</p> <p>6 the 2021 -- 2020 cash flow figure. But for</p> <p>7 2021 and 2022, I stand by them.</p> <p>8 Q. So what GAAP standard requires you</p> <p>9 not to include these due from related parties?</p> <p>10 A. These were loans. They're loans.</p> <p>11 They are not --</p> <p>12 Q. I understand, sir. I am asking you:</p> <p>13 What -- what GAAP standard requires that?</p> <p>14 A. It's not properly attributed to cash</p> <p>15 flow from -- it should have been -- GAAP would</p> <p>16 say it's properly attributed to cash flow</p> <p>17 provided by financing, not by operations. They</p> <p>18 borrowed this money from affiliates.</p> <p>19 Q. Sir, that's not my question. Focus</p> <p>20 on my question, sir.</p> <p>21 My question is: Name me the</p> <p>22 specific GAAP standard that requires you to not</p>	<p style="text-align: right;">Page 191</p> <p>1 are material.</p> <p>2 Q. Oh. And -- and what -- what</p> <p>3 constitutes material?</p> <p>4 A. Just -- I mean, if it's just a</p> <p>5 couple 100,000, it doesn't have a -- it's not a</p> <p>6 big percentage of the overall numbers, but when</p> <p>7 you -- when you drop in a \$10 million loan from</p> <p>8 affiliates and you try to pass that off as</p> <p>9 operating activities, no. That's not -- that's</p> <p>10 legit.</p> <p>11 Q. And, sir, you said that it's loans</p> <p>12 from related parties. Did you see the</p> <p>13 underlying loan documents for that?</p> <p>14 A. No. I would like to see them</p> <p>15 because they may have tax implications on that.</p> <p>16 Q. All right. Can we go to -- back to</p> <p>17 your report, and if you could please go to</p> <p>18 Paragraph 88, so on Page 20.</p> <p>19 A. 88. On my report?</p> <p>20 Q. Your report. Page 20, Paragraph 88.</p> <p>21 A. Okay. Yes.</p> <p>22 Q. Okay. And in Paragraph 88, you</p>
<p style="text-align: right;">Page 190</p> <p>1 include these amounts due for related parties</p> <p>2 as part of your calculation of net cash. What</p> <p>3 standards should I look at?</p> <p>4 A. I will get it for you. It's --</p> <p>5 it's -- what is the GAAP standard that says</p> <p>6 don't count -- don't count financing in</p> <p>7 operations. I will find it for you.</p> <p>8 Q. But you don't -- you don't know</p> <p>9 right now, though?</p> <p>10 A. I do not know right now.</p> <p>11 Q. Okay. But now let's go back to</p> <p>12 2021, sir.</p> <p>13 A. Yep.</p> <p>14 Q. You see how in due from related</p> <p>15 parties for 2021 --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- you have a \$618,011, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And you have then -- and then a</p> <p>20 little bit down there \$247,598, correct?</p> <p>21 A. To -- to related parties, right. I</p> <p>22 didn't say it was material. The -- the others</p>	<p style="text-align: right;">Page 192</p> <p>1 state that Smartmatic experts failed to</p> <p>2 consider, and you list 1, 2, 3, 4, 5.</p> <p>3 Do you see that?</p> <p>4 A. Yes, I see that.</p> <p>5 Q. Okay. In Number 1 one of the things</p> <p>6 you say that they did -- failed to take into</p> <p>7 account is its past history of having been</p> <p>8 kicked out of the U.S. market by the federal</p> <p>9 government sometime in 2005 to 2006 time frame.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And what do you mean by "kicked</p> <p>13 out"?</p> <p>14 A. So CFIUS rejected -- I think it was</p> <p>15 foreign ownership, and CFIUS said they're not</p> <p>16 eligible. They got kicked out.</p> <p>17 Q. So meaning that CFIUS barred them</p> <p>18 from operating in the U.S.; is that what you</p> <p>19 are saying?</p> <p>20 A. I think that's right.</p> <p>21 Q. Isn't it true that Smartmatic</p> <p>22 voluntarily decided to divest itself of its</p>

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<p style="text-align: right;">Page 193</p> <p>1 U.S. subsidiary rather than CFIUS banning them</p> <p>2 from operating in the U.S.?</p> <p>3 A. So the CFIUS concern just didn't --</p> <p>4 didn't magically appear. As far -- as far as</p> <p>5 who did what, the bottom line is that CFIUS had</p> <p>6 problems with Smartmatic in the U.S.</p> <p>7 Q. Sir, you just said that CFIUS barred</p> <p>8 them from operating. And my question is:</p> <p>9 Isn't it, in fact, true that CFIUS did no such</p> <p>10 thing?</p> <p>11 A. I -- I still believe they got kicked</p> <p>12 out of the U.S. market.</p> <p>13 MR. LETKEWICZ: Okay. Can you</p> <p>14 please put Tab 23 in the chat.</p> <p>15 THE WITNESS: They just sort of</p> <p>16 voluntarily left on their own?</p> <p>17 (Deposition Exhibit 679 was marked</p> <p>18 for identification.)</p> <p>19 THE WITNESS: Which one is it?</p> <p>20 BY MR. LETKEWICZ:</p> <p>21 Q. So this is going to be 679.</p> <p>22 A. Okay.</p>	<p style="text-align: right;">Page 195</p> <p>1 And at the very bottom, it says: "A</p> <p>2 spokesman for the treasury, which takes the</p> <p>3 lead on matters regarding CFIUS, said the</p> <p>4 committee agreed to end the Smartmatic review</p> <p>5 but added that CFIUS will closely monitor the</p> <p>6 sales process," correct?</p> <p>7 A. I see that.</p> <p>8 Q. Okay. So CFIUS decided to end the</p> <p>9 review after Smartmatic said it was going to</p> <p>10 divest itself of its U.S. operations, correct?</p> <p>11 MR. KACHOUROFF: I'm going to object</p> <p>12 to form. This is --</p> <p>13 THE WITNESS: Right. So, you know,</p> <p>14 you know in regulatory worlds that -- that this</p> <p>15 news report may not actually describe what</p> <p>16 actually happened. I mean, the press -- so,</p> <p>17 you know, when you have regulatory settlements</p> <p>18 like this, that's -- that's what drives it, not</p> <p>19 a -- not a newspaper report about it.</p> <p>20 BY MR. LETKEWICZ:</p> <p>21 Q. Okay. Have you seen the -- the</p> <p>22 regulatory report concerning --</p>
<p style="text-align: right;">Page 194</p> <p>1 Q. Let me know when you have it open.</p> <p>2 A. It's open.</p> <p>3 Q. Okay. And this is a December 22,</p> <p>4 2006 article from The Wall Street Journal.</p> <p>5 Do you see that?</p> <p>6 A. I see it.</p> <p>7 Q. Okay. And the headline is:</p> <p>8 "Smartmatic to Shed U.S. Unit, End Probe Into</p> <p>9 Venezuelan Links."</p> <p>10 Do you see that headline?</p> <p>11 A. I see that headline.</p> <p>12 Q. Okay. And in the first paragraph,</p> <p>13 it says: "Voting machine Smartmatic said it</p> <p>14 would sell its U.S. subsidiary to end a review</p> <p>15 by the Committee on Foreign Investment in the</p> <p>16 U.S." -- "into the U.S. into whether Smartmatic</p> <p>17 is partially owned by the Venezuelan</p> <p>18 government."</p> <p>19 Do you see that?</p> <p>20 A. I see it.</p> <p>21 Q. Okay. And please go to the second</p> <p>22 page.</p>	<p style="text-align: right;">Page 196</p> <p>1 A. No. No.</p> <p>2 Q. -- this investigation?</p> <p>3 A. No.</p> <p>4 Q. So --</p> <p>5 A. -- but I have read enough of these</p> <p>6 to know that it wasn't just a voluntary thing</p> <p>7 by Smartmatic.</p> <p>8 Q. But, sir, you are speculating that</p> <p>9 CFIUS is the one that, in fact, kicked out</p> <p>10 Smartmatic, correct?</p> <p>11 A. I don't think it's speculation.</p> <p>12 Q. Oh, so did you speak to someone at</p> <p>13 CFIUS about this investigation?</p> <p>14 A. No, I did not.</p> <p>15 Q. All right. Can you go back to page</p> <p>16 -- back to Paragraph 88 and Number 2. Let me</p> <p>17 know when you are there.</p> <p>18 A. Okay. I'm there.</p> <p>19 Q. And at Number 2, you said that they</p> <p>20 failed to consider Smartmatic's own poor</p> <p>21 integrity, its infringement, and misuse of</p> <p>22 election technology owned by the leading United</p>

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<p style="text-align: right;">Page 197</p> <p>1 States election technology company, ES&S.</p> <p>2 A. Yes, I see that.</p> <p>3 Q. All right. Isn't it true that</p> <p>4 Smartmatic won its lawsuit brought by ES&S</p> <p>5 alleged patent infringement?</p> <p>6 A. I don't know that.</p> <p>7 Q. I will help you out with that.</p> <p>8 MR. LETKEWICZ: Can you put Tab 12</p> <p>9 and Tab 21 in the chat.</p> <p>10 (Deposition Exhibit 680 was marked</p> <p>11 for identification.)</p> <p>12 (Deposition Exhibit 681 was marked</p> <p>13 for identification.)</p> <p>14 MR. KACHOUROFF: If it will make it</p> <p>15 go faster, we stipulate to that fact.</p> <p>16 THE WITNESS: Okay.</p> <p>17 BY MR. LETKEWICZ:</p> <p>18 Q. So you would agree then, sir, that</p> <p>19 Smartmatic won the patent lawsuit brought by</p> <p>20 ES&S. Is that -- is that -- do I understand</p> <p>21 that correctly from your attorney?</p> <p>22 A. From me?</p>	<p style="text-align: right;">Page 199</p> <p>1 judge that the last patent remaining in the</p> <p>2 case is invalid."</p> <p>3 Do you see that?</p> <p>4 A. I see that.</p> <p>5 Q. Okay. Open up 681. And 681 should</p> <p>6 have a document entitled: "Electronic [sic]</p> <p>7 Systems & Software v. Smartmatic USA Corp.</p> <p>8 Judgment."</p> <p>9 Do you see that?</p> <p>10 A. Yes, I see that.</p> <p>11 Q. And it says: "For the reasons set</p> <p>12 forth in the Court's memorandum opinion and</p> <p>13 order dated April 25, 2023, it is ordered and</p> <p>14 adjudicated that the judgement be and is hereby</p> <p>15 entered in favor of defendant and against</p> <p>16 plaintiff," correct?</p> <p>17 A. I see that.</p> <p>18 Q. And the defendant is Smartmatic USA</p> <p>19 Corp., correct?</p> <p>20 A. Yes.</p> <p>21 Q. And the plaintiff is ES&S, correct?</p> <p>22 MR. KACHOUROFF: Can we move along?</p>
<p style="text-align: right;">Page 198</p> <p>1 Q. Yeah, I am asking you.</p> <p>2 A. I'm not -- I'm not aware that there</p> <p>3 was any win or loss on that.</p> <p>4 Q. Okay. Well, let's look at this</p> <p>5 really quick then.</p> <p>6 All right. If you look at -- first,</p> <p>7 let's look at -- okay. Can you look at</p> <p>8 Plaintiffs' Exhibit 680 first, please.</p> <p>9 A. 680.</p> <p>10 Q. Yep.</p> <p>11 A. The Reuters Report?</p> <p>12 Q. Yep. And the headline is:</p> <p>13 "Smartmatic Defeats Patent Lawsuit From Voting</p> <p>14 Machine Rival ES&S."</p> <p>15 Do you see that?</p> <p>16 A. I see that statement -- headline.</p> <p>17 Q. Okay. And then if you go to the</p> <p>18 second page at the top, it says: "Voting</p> <p>19 technology company Smartmatic USA Corp. on</p> <p>20 Tuesday fended off a patent infringement</p> <p>21 lawsuit brought by competitor Electronic [sic]</p> <p>22 Systems & Software, LLC, persuading a federal</p>	<p style="text-align: right;">Page 200</p> <p>1 We already stipulated to this.</p> <p>2 MR. LETKEWICZ: Well, he didn't, so</p> <p>3 I had to ask the questions.</p> <p>4 So let's move --</p> <p>5 THE WITNESS: The pendency -- the</p> <p>6 pendency of this dispute had -- you can't</p> <p>7 ignore the dispute with -- with their only</p> <p>8 contractor during the time of the pendency of</p> <p>9 this dispute. You don't think L.A. doesn't --</p> <p>10 L.A. doesn't know about this?</p> <p>11 BY MR. LETKEWICZ:</p> <p>12 Q. Well, you say in Number 2 that</p> <p>13 Smartmatic's own poor integrity and its</p> <p>14 infringement and misuse. So you are saying</p> <p>15 they did, in fact, commit patent infringement</p> <p>16 in Number 2, correct? You are not saying an</p> <p>17 allegation.</p> <p>18 A. The allegation -- the allegation was</p> <p>19 that they misused.</p> <p>20 Q. Where does it say in Number 2</p> <p>21 allegation?</p> <p>22 A. In what? In Number 2?</p>

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<p style="text-align: right;">Page 201</p> <p>1 Q. Where does it say allegation?</p> <p>2 A. Oh, it doesn't have the word</p> <p>3 "allegation."</p> <p>4 Q. Okay --</p> <p>5 A. Considering its poor integrity --</p> <p>6 okay.</p> <p>7 Q. -- to Number 5, we have that</p> <p>8 Smartmatic experts failed to consider that</p> <p>9 Smartmatic's one customer, Los Angeles County,</p> <p>10 had significant problems with the vulnerability</p> <p>11 of the election equipment use in Los Angeles</p> <p>12 which resulted in the county district attorney</p> <p>13 seizing the polling equipment of Konnech and</p> <p>14 arresting its Chinese CEO, Eugene Yu, for a</p> <p>15 serious data breach of poll workers and voter</p> <p>16 data that flowed into the Smartmatic touch</p> <p>17 pads.</p> <p>18 Do you see that?</p> <p>19 A. I see that.</p> <p>20 Q. Do you know what election equipment</p> <p>21 Smartmatic provided L.A. County?</p> <p>22 A. Touch pads.</p>	<p style="text-align: right;">Page 203</p> <p>1 A. So PII of poll workers, yes. Voter</p> <p>2 registration files, yes. It -- it. It remains</p> <p>3 to be seen what -- whether it had further</p> <p>4 impact on other things.</p> <p>5 MR. LETKEWICZ: All right. Can you</p> <p>6 put Tab 22 in the chat, and this will be marked</p> <p>7 as Plaintiffs' Exhibit 682.</p> <p>8 (Deposition Exhibit 682 was marked</p> <p>9 for identification.)</p> <p>10 THE WITNESS: One second. I have to</p> <p>11 plug in my phone.</p> <p>12 Okay. Go -- go ahead. I am just</p> <p>13 making sure I get some power in my phone before</p> <p>14 I lose it.</p> <p>15 BY MR. LETKEWICZ:</p> <p>16 Q. Okay. So are you able to open 682?</p> <p>17 A. No. My -- my battery pack I had by</p> <p>18 my computer is not working, so let me see how</p> <p>19 much -- how much juice I have. Okay. It's</p> <p>20 charging.</p> <p>21 Can you refer to it while I get to</p> <p>22 my charge here where I can jump back to it?</p>
<p style="text-align: right;">Page 202</p> <p>1 Q. Anything else?</p> <p>2 A. Software on the tabulators.</p> <p>3 Q. Anything else?</p> <p>4 A. I -- I'm not sure.</p> <p>5 Q. Do you know if Smartmatic provided</p> <p>6 e-poll books to L.A. County?</p> <p>7 A. I don't believe so.</p> <p>8 Q. And do you know what election</p> <p>9 services Smartmatic provided, if any, to L.A.</p> <p>10 County?</p> <p>11 A. I mentioned it was touch pads, you</p> <p>12 know, the voting systems for all people,</p> <p>13 accessible touch pads. They -- it provided</p> <p>14 software on the tabulators.</p> <p>15 Q. And nothing else to your knowledge?</p> <p>16 A. I'm not sure. I don't know.</p> <p>17 Q. Isn't it true that the alleged data</p> <p>18 breach you discuss in Paragraph 88 was limited</p> <p>19 to the personal identifying information of poll</p> <p>20 workers and that it had no impact on the</p> <p>21 tabulation of votes and did not alter election</p> <p>22 results?</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. Sure. Why don't we just put it on</p> <p>2 the screen.</p> <p>3 A. Yeah.</p> <p>4 Q. All right. So Plaintiffs' Exhibit</p> <p>5 682, this is an October 4, 2022 press release</p> <p>6 from L.A. County.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. All right. And the headline is:</p> <p>10 "Head of Election Worker Management Company</p> <p>11 Arrested in Connection With Theft of Personal</p> <p>12 Data."</p> <p>13 And in the third full paragraph, it</p> <p>14 says: "This investigation is concerned solely</p> <p>15 with the personal identifying information of</p> <p>16 election workers. In this case, alleged</p> <p>17 conduct had no impact on the tabulation of</p> <p>18 votes and did not alter election results."</p> <p>19 Do you see that?</p> <p>20 A. I -- I did -- I did -- I do see</p> <p>21 that, and I remember hearing that, but I'm not</p> <p>22 sure that's true.</p>

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<p style="text-align: right;">Page 205</p> <p>1 MR. KACHOUROFF: Object to form. 2 Also to hearsay. This is inadmissible. 3 BY MR. LETKEWICZ: 4 Q. Okay. And if we go down a couple 5 paragraphs, it's describing Konnech, and it 6 says: "Describes [sic] and sells its 7 proprietary PollChief software, which is an 8 election worker management system that was 9 utilized by the county in the last California 10 election. The software assists with poll 11 worker assignments, communications and payroll. 12 PollChief requires that workers submit personal 13 identifying information, which is retained by 14 Konnech." 15 Do you see that? 16 A. Yes. 17 Q. So that has nothing to do with voter 18 registration information, correct? 19 A. Well, the -- the words don't include 20 those, but in function, the -- the -- the 21 e-poll books, PollChief in particular, are 22 populated with voter rolls.</p>	<p style="text-align: right;">Page 207</p> <p>1 A. Uh-huh. Back on Konnech, number 5? 2 Q. No. We are on Page 21. 3 A. I know. Is it that Number 5 item? 4 Q. No. That's on Page 20. 5 A. Okay. 6 Q. And so in the middle of the -- 7 MR. LETKEWICZ: Can you scroll down 8 a little bit, Jane. 9 BY MR. LETKEWICZ: 10 Q. And in the middle of that last 11 paragraph -- 12 MR. LETKEWICZ: You can highlight 13 it. 14 BY MR. LETKEWICZ: 15 Q. -- it says: "Smartmatic with no 16 cap" -- 17 MR. LETKEWICZ: Sorry. Scroll down. 18 BY MR. LETKEWICZ: 19 Q. "Smartmatic with no capital and no 20 prospects has lost out on every contract 21 proposal it has made in history (with the 22 exception" to -- "with the exception of Los</p>
<p style="text-align: right;">Page 206</p> <p>1 Q. And -- and have you, in fact, seen 2 that, sir? 3 A. I have not seen that directly. 4 Q. Okay. So that's speculation then on 5 your part then? 6 A. It's -- it's a -- it's an allegation 7 in -- it's an -- it's an -- it's an expert 8 finding -- let's put it that way -- that voter 9 data was included in this Konnech problem. 10 Q. Was that an expert finding of -- by 11 you? 12 A. No. 13 Q. Let's go back to your report. And 14 if you go down to Page 21 -- are you able to 15 see -- are you able to see your report? Right? 16 A. No. You have to share it again. 17 Just -- just give me some -- 18 Q. Okay. 19 A. -- yeah, share it if you could. 20 What was the page? 21 Q. Page 21. So we're going to go to 22 Page 21.</p>	<p style="text-align: right;">Page 208</p> <p>1 Angeles)." 2 Do you see that? 3 A. Yes. 4 Q. Isn't it true that Smartmatic has 5 done business outside of Los Angeles County? 6 A. In the United States? 7 Q. Yes. 8 A. No. Where? Show me. 9 Q. All right. 10 A. Why would BDO -- BDO says they have 11 one customer. They have one customer, Los 12 Angeles County. 13 Q. Right. But -- but you understand, 14 sir, that they have operated in the United 15 States before 2020, correct? 16 A. Oh, so you're talking about a 17 different time period? 18 Q. Well, you -- you said -- you say in 19 your report here they only have one contract -- 20 they have only won one contract. So I am 21 trying to understand what you're referring to, 22 sir.</p>

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<p style="text-align: right;">Page 209</p> <p>1 A. Well, I'm referring to whatever BDO 2 said. They have one customer. Their own 3 auditor said they have one customer. 4 Q. And so what you're referring to then 5 is simply to Smartmatic USA during the 2020 to 6 2022 time frame, correct? 7 A. Yes. That's all the -- I don't 8 believe I had 2019 -- maybe I did. I think -- 9 I think just from -- maybe 2018 to 2022, it 10 seemed like it was one customer, and BDO 11 confirmed that. 12 Q. No. 13 A. No? There was some other customer 14 in that -- that time period? 15 MR. LETKEWICZ: All right. We have 16 been going a little over an hour. Why don't we 17 take a break. You can get a little more juice 18 on your phone. 19 THE WITNESS: Okay. That's good. 20 MR. LETKEWICZ: Why don't we come 21 back in, like, ten minutes. Does that work? 22 MR. KACHOUROFF: Why are we</p>	<p style="text-align: right;">Page 211</p> <p>1 were damaged so much, not just reputation, but 2 they would have -- they would have basically 3 truncated the useful life of their -- of their 4 intellectual property assets, and they didn't. 5 So there was no meaningful change. 6 I mean, they -- they -- earlier 7 transferred a lot of IP somewhere to somebody, 8 but there was no impairment of whatever they 9 owned. Usually reputational harm or -- or 10 damages to the -- to the prospects of a 11 business, customer lists, you know. That -- 12 that would -- and if the right accounting is 13 done, you've got to impair the assets, and they 14 did not. 15 Q. Now, earlier in our -- some of our 16 more recent questioning, Smartmatic's auditor 17 indicated that Smartmatic USA's financials were 18 presented fairly and included the required 19 comparative information in accordance with 20 IFRS. Do you remember that? 21 A. Yes. 22 Q. Are you aware, sir, that under IFRS</p>
<p style="text-align: right;">Page 210</p> <p>1 taking -- why are we taking a break? 2 MR. LETKEWICZ: So, I mean, we've 3 been going a little over an hour. I mean -- I 4 mean, I don't know how workable this is he 5 having -- him holding his phone while we're 6 showing documents so -- 7 THE WITNESS: Ten minutes to get 8 charged. Ten, that will help. That will help, 9 yes. 10 THE VIDEOGRAPHER: We are going off 11 the record. 2:05 p.m. 12 (A short recess was taken.) 13 THE VIDEOGRAPHER: Back on the 14 record. 2:15 p.m. 15 BY MR. LETKEWICZ: 16 Q. Earlier we had talked about -- that 17 in your view if Smartmatic had suffered 18 reputational harm, it would have shown up as an 19 impairment to Smartmatic USA's intangible 20 assets, correct? 21 A. Not necessarily reputational harm, 22 but if they thought that -- if they felt they</p>	<p style="text-align: right;">Page 212</p> <p>1 a company's intangible assets would not include 2 a company's reputation? 3 A. I don't know that. 4 Q. Okay. Do you know -- are you aware, 5 sir, that under IFRS standards a company's 6 intangible assets would not include a company's 7 goodwill? 8 A. I don't know that. You can classify 9 -- I don't -- I don't know their exact 10 classifications. It could be customer lists, 11 value of business, business prospects. My -- 12 my comments about the impairment would have 13 affected any and all those. 14 If what you are suggesting -- if you 15 suggest there is some damage from statements, 16 they need to impair their -- their -- their 17 assets for future business, business prospects, 18 customer lists, things like that. You can't -- 19 if you're -- if you're going to have damage, 20 it's going to truncate your useful life and you 21 have to shorten your cash flow forecasting 22 period and -- and take an impairment.</p>

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<p style="text-align: right;">Page 213</p> <p>1 They didn't take any impairment. So</p> <p>2 you can -- you can -- I'll take you at your</p> <p>3 word for IFRS, but -- but it -- from U.S. GAAP</p> <p>4 perspective, they needed to take an impairment,</p> <p>5 if -- if it were true, but they did not take an</p> <p>6 impairment, so that leads one to believe that</p> <p>7 the accountants didn't think there was any</p> <p>8 damage.</p> <p>9 Q. You are aware, sir, that the audit</p> <p>10 was done in accordance with IFRS standards,</p> <p>11 correct?</p> <p>12 A. With respect to -- as -- as we</p> <p>13 discussed before with the comparatives.</p> <p>14 Q. Right. That's what I want to stay</p> <p>15 focused on for the moment.</p> <p>16 Are you aware under IFRS customer</p> <p>17 lists should not be recognized as intangible</p> <p>18 assets?</p> <p>19 A. I'm not aware of that. It could be</p> <p>20 just they classify them somewhere else. That's</p> <p>21 all. It could be just geography on the -- on</p> <p>22 the balance sheet, and I -- I -- you know, my</p>	<p style="text-align: right;">Page 215</p> <p>1 A. Of which -- of which one?</p> <p>2 Q. Of your July 9 report, sir.</p> <p>3 A. Oh, okay. Page 11, 43?</p> <p>4 Q. Yep?</p> <p>5 A. Okay. I'm there.</p> <p>6 Q. All right. And you say:</p> <p>7 "Plaintiffs' use" -- goes on, and you say:</p> <p>8 "Either did not know, failed to realize, or</p> <p>9 intentionally ignored that a required</p> <p>10 impairment to intangible assets would be</p> <p>11 necessary."</p> <p>12 A. Yes. Yeah.</p> <p>13 Q. So in your report, you're talking</p> <p>14 about an impairment to intangible assets,</p> <p>15 correct?</p> <p>16 A. Yes, and I'm broadly using</p> <p>17 intangibles to include business prospects,</p> <p>18 customer lists, goodwill, all of it. All the</p> <p>19 things they had put into intangibles.</p> <p>20 Q. And are you familiar, sir, with</p> <p>21 International Accounting Standard 38?</p> <p>22 A. No.</p>
<p style="text-align: right;">Page 214</p> <p>1 comments are globally. You know, if you get --</p> <p>2 you've got impact on the business, you need to</p> <p>3 impair that particular asset however it's</p> <p>4 classified. If IFRS says put it in something</p> <p>5 else, you impair it. They didn't.</p> <p>6 They did -- they did take an</p> <p>7 impairment on PPE, \$16 million. So it's not</p> <p>8 like impairments were just not done.</p> <p>9 Smartmatic took an impairment on PPE.</p> <p>10 Q. All right. So let's go to --</p> <p>11 MR. LETKEWICZ: Jane put the --</p> <p>12 since it looks like he does not have his</p> <p>13 computer in front of him --</p> <p>14 THE WITNESS: I will now. I will.</p> <p>15 BY MR. LETKEWICZ:</p> <p>16 Q. Okay.</p> <p>17 A. Go ahead.</p> <p>18 Q. All right. Well, when you get</p> <p>19 there --</p> <p>20 A. Yep.</p> <p>21 Q. -- I would direct your attention to</p> <p>22 Page 11 and Paragraph 43.</p>	<p style="text-align: right;">Page 216</p> <p>1 MR. LETKEWICZ: Can you put that --</p> <p>2 can you put Tab 20 in the chat, and this will</p> <p>3 be marked as Plaintiffs' Exhibit 683.</p> <p>4 (Deposition Exhibit 683 was marked</p> <p>5 for identification.)</p> <p>6 THE WITNESS: Okay.</p> <p>7 BY MR. LETKEWICZ:</p> <p>8 Q. All right. And you should see on</p> <p>9 the first page IAS38, intangible assets. Do</p> <p>10 you see that?</p> <p>11 A. I do.</p> <p>12 Q. Okay. And if you could go to Page</p> <p>13 5, which in the bottom right-hand corner is</p> <p>14 A1519.</p> <p>15 A. Okay. I'm there.</p> <p>16 Q. Okay. And it says: "The objective</p> <p>17 of the standard is to prescribe the accounting</p> <p>18 treatment for intangible assets that are not</p> <p>19 dealt with specifically in any other standard."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. If you can go to the Page 15,</p>

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<p style="text-align: right;">Page 217</p> <p>1 which in the lower right-hand corner is A1529.</p> <p>2 A. Okay.</p> <p>3 Q. And do you see how there's numbering</p> <p>4 on the left-hand side?</p> <p>5 A. I do.</p> <p>6 Q. And in 48 it says --</p> <p>7 MR. KACHOUROFF: Sorry -- I'm sorry</p> <p>8 to interrupt. Where are we? We're on -- we're</p> <p>9 on Exhibit 683 of what page?</p> <p>10 MR. LETKEWICZ: We're at Page 15,</p> <p>11 which in the lower right-hand corner is A1529.</p> <p>12 MR. KACHOUROFF: Give me one second</p> <p>13 to follow you. Okay.</p> <p>14 BY MR. LETKEWICZ:</p> <p>15 Q. All right. And at 48 it says:</p> <p>16 "Internally generated goodwill shall not be</p> <p>17 recognized as an asset," correct?</p> <p>18 A. I see that.</p> <p>19 Q. Okay. And if you go to -- let's</p> <p>20 see. Two pages later, which is A1531.</p> <p>21 A. Okay.</p> <p>22 Q. And it says: "Internally generated</p>	<p style="text-align: right;">Page 219</p> <p>1 A. Okay. I see that.</p> <p>2 Q. And we looked at earlier that in</p> <p>3 internally generated goodwill shall not be</p> <p>4 recognized as an asset. We saw that also in</p> <p>5 IAS38, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Have you looked at BDO's work papers</p> <p>8 concerning Smartmatic USA's intangible assets</p> <p>9 for 2020?</p> <p>10 A. No.</p> <p>11 MR. KACHOUROFF: No. The defendants</p> <p>12 have -- the plaintiffs have refused to turn</p> <p>13 them over, so just letting you know. I haven't</p> <p>14 gotten them.</p> <p>15 MR. LETKEWICZ: I don't believe that</p> <p>16 is true, but your -- your statement is noted.</p> <p>17 MR. KACHOUROFF: As my colleagues --</p> <p>18 I told my colleagues, we don't have the same</p> <p>19 federal law system that you-all have. I</p> <p>20 literally have to search through a hard drive</p> <p>21 page by page. So if you have them -- and I</p> <p>22 have asked for all the documents. I was given</p>
<p style="text-align: right;">Page 218</p> <p>1 brands, mastheads, publishing titles, customer</p> <p>2 lists, and items similar in substance shall not</p> <p>3 be recognized as intangible assets."</p> <p>4 Do you see that?</p> <p>5 A. I do, yes.</p> <p>6 Q. Okay. All right. And so what IAS</p> <p>7 38 is saying here is that brands are not an</p> <p>8 intangible asset, correct?</p> <p>9 MR. KACHOUROFF: I'm going to object</p> <p>10 to that because I think that's a misstatement</p> <p>11 of the IAS Rule 38 which talks about</p> <p>12 identifiable assets, and I'm also going to</p> <p>13 object to form.</p> <p>14 MR. LETKEWICZ: Okay.</p> <p>15 THE WITNESS: Was -- is there a</p> <p>16 question?</p> <p>17 BY MR. LETKEWICZ:</p> <p>18 Q. Sure. So IAS38 is saying here at 63</p> <p>19 is that internally generated brands, mastheads,</p> <p>20 publishing titles, customer lists, and items</p> <p>21 similar in substance shall not be recognized as</p> <p>22 intangible assets.</p>	<p style="text-align: right;">Page 220</p> <p>1 this four set of Bates-stamped numbers. I</p> <p>2 found them, and that was not among them.</p> <p>3 MR. LETKEWICZ: Okay.</p> <p>4 BY MR. LETKEWICZ:</p> <p>5 Q. You have not looked at BDO's work</p> <p>6 papers concerning Smartmatic USA's intangible</p> <p>7 assets for 2021, correct?</p> <p>8 A. True.</p> <p>9 Q. You have not looked at Smartmatic --</p> <p>10 I'm sorry. Strike that.</p> <p>11 You have not looked at BDO's work</p> <p>12 papers concerning Smartmatic USA's intangible</p> <p>13 assets for 2022, correct?</p> <p>14 A. Correct.</p> <p>15 Q. So you would not know why Smartmatic</p> <p>16 USA did not recognize an intangible asset</p> <p>17 impairment for 2020, correct?</p> <p>18 MR. KACHOUROFF: Again, I object to</p> <p>19 the form of the question and the notion that we</p> <p>20 have received these. If you've got these</p> <p>21 documents and you have the Bates stamp numbers</p> <p>22 for them, I would love to have them here on the</p>

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<p style="text-align: right;">Page 221</p> <p>1 record.</p> <p>2 BY MR. LETKEWICZ:</p> <p>3 Q. Sir, I am just asking if you know or</p> <p>4 not.</p> <p>5 A. So I know that there was no</p> <p>6 impairment --</p> <p>7 Q. Okay.</p> <p>8 A. -- in those periods.</p> <p>9 Q. But --</p> <p>10 A. No impairment to any assets,</p> <p>11 regardless of intangibles or anything. There</p> <p>12 was no -- and there should -- if -- if you</p> <p>13 believe that there was damage to the company,</p> <p>14 something ought to -- ought to have been</p> <p>15 impaired, and nothing was impaired so --</p> <p>16 Q. Sir, sir, we just looked at --</p> <p>17 A. -- the element -- the embedded</p> <p>18 costs, nothing was impaired. So --</p> <p>19 Q. But, again, you don't -- okay. I'm</p> <p>20 sorry.</p> <p>21 A. Okay.</p> <p>22 Q. But you don't know why there was an</p>	<p style="text-align: right;">Page 223</p> <p>1 BY MR. LETKEWICZ:</p> <p>2 Q. You -- when you were talking about</p> <p>3 impairment, you said an impairment to</p> <p>4 intangible assets. That was -- those were your</p> <p>5 words.</p> <p>6 A. I'm going to go back to what I used</p> <p>7 in my report. What -- impairment --</p> <p>8 Q. Sure. It's in Paragraph 43 --</p> <p>9 A. -- required impairment to intangible</p> <p>10 assets would be necessary. Right.</p> <p>11 Q. And --</p> <p>12 A. Go ahead.</p> <p>13 Q. -- sir, sir, are you aware of -- you</p> <p>14 mentioned multiple times about GAAP. Are you</p> <p>15 able to tell me the specific -- sitting here</p> <p>16 today, the specific GAAP standard that would --</p> <p>17 that if there was -- that -- I'm sorry. Strike</p> <p>18 that.</p> <p>19 Are you able -- sitting here today,</p> <p>20 are you able to cite to the specific GAAP</p> <p>21 standard that intangible assets would include</p> <p>22 reputation, good -- or goodwill?</p>
<p style="text-align: right;">Page 222</p> <p>1 impairment or there wasn't an impairment,</p> <p>2 correct?</p> <p>3 A. I didn't know that there wasn't an</p> <p>4 impairment. And it's -- it's not consistent</p> <p>5 with your -- your allegations in this lawsuit</p> <p>6 do not match with that at all. It's totally</p> <p>7 inconsistent.</p> <p>8 Q. So, sir, we -- we just looked at,</p> <p>9 though, IAS38. That's --</p> <p>10 A. No. You looked at particular</p> <p>11 defined categories. You didn't look at the</p> <p>12 entirety of what's on the balance sheet. There</p> <p>13 were no impairments to anything on the balance</p> <p>14 sheet related to impact.</p> <p>15 Q. So, sir, we just looked at in your</p> <p>16 report where you -- you didn't say --</p> <p>17 A. Doesn't matter. Doesn't matter.</p> <p>18 Q. Sir, just listen to my question.</p> <p>19 Okay. Focus on my question, sir. It is --</p> <p>20 MR. KACHOUROFF: Just ask your</p> <p>21 questions. Don't tell him to focus. That's</p> <p>22 deprecating. Just ask the question.</p>	<p style="text-align: right;">Page 224</p> <p>1 A. I cannot cite that here. I know</p> <p>2 that many companies do it -- you take it -- one</p> <p>3 company, they will do it differently from other</p> <p>4 companies. Some will it have it included.</p> <p>5 Some will break it out as a separate line item.</p> <p>6 You know, customer list, software development,</p> <p>7 future business might be classified separately.</p> <p>8 Sometimes some companies will put it into</p> <p>9 intangible assets. So it's -- it's not</p> <p>10 consistent.</p> <p>11 Even the -- even the -- and, you</p> <p>12 know, in -- in Smartmatic's case, they don't</p> <p>13 even use GAAP so...</p> <p>14 Q. And then are you aware of a specific</p> <p>15 rule or statute that requires Smartmatic USA to</p> <p>16 use GAAP as opposed to IFRS?</p> <p>17 A. No. No, they're -- they're --</p> <p>18 they're not required to use GAAP in my view.</p> <p>19 It would be better, be more -- higher</p> <p>20 integrity, transparent, but they don't.</p> <p>21 Q. One of the reasons that you cite in</p> <p>22 your report that defendants did not cause any</p>

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<p style="text-align: right;">Page 225</p> <p>1 harm to Smartmatic is because Smartmatic was</p> <p>2 losing money in 2021 and 2022, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you understand that Smartmatic</p> <p>5 is claiming lost profits as a result of Mr.</p> <p>6 Lindell's defamatory statement. You're aware</p> <p>7 that is what Smartmatic's allegation is?</p> <p>8 A. What profits? There weren't any.</p> <p>9 Q. Sir, I -- I understand that it's</p> <p>10 your opinion that there were no profits.</p> <p>11 A. There weren't any.</p> <p>12 Q. My question is: Smartmatic is</p> <p>13 claiming lost profits as a result of the</p> <p>14 defendants' conduct?</p> <p>15 A. Yeah. I heard that, yes.</p> <p>16 MR. LETKEWICZ: Let's put Tab 18 in</p> <p>17 the chat.</p> <p>18 (Deposition Exhibit 684 was marked</p> <p>19 for identification.)</p> <p>20 MR. LETKEWICZ: And for the record,</p> <p>21 this will be marked as Plaintiffs' Exhibit 684.</p> <p>22 BY MR. LETKEWICZ:</p>	<p style="text-align: right;">Page 227</p> <p>1 compensatory damages, damages based on lost</p> <p>2 profits redress the defendants' unlawful act or</p> <p>3 acts by compensating the plaintiff for the</p> <p>4 profits that would have been obtained but for</p> <p>5 the unlawful act or acts."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Okay. And then if you can go to the</p> <p>9 next page, and right underneath the graph, it</p> <p>10 says: "Typically the first step in this</p> <p>11 calculation is to estimate profits that would</p> <p>12 have been obtained by the harmed party</p> <p>13 simplified to plaintiff but for the unlawful</p> <p>14 act during the damages period."</p> <p>15 Do you see that?</p> <p>16 A. I heard what you said.</p> <p>17 Q. Okay. And did you undertake any</p> <p>18 analysis as to what Smartmatic's revenues would</p> <p>19 have been but for Mr. Lindell defamatory</p> <p>20 statements?</p> <p>21 A. In the chart right above what you</p> <p>22 just read, it assumes that there is this --</p>
<p style="text-align: right;">Page 226</p> <p>1 Q. Let me know when you have it open.</p> <p>2 A. It's 684, right?</p> <p>3 Q. Yes. So you should see in front of</p> <p>4 you: "Forensic and Valuation Services Practice</p> <p>5 Aid Calculating Lost Profits."</p> <p>6 Do you see that?</p> <p>7 A. I do, yep.</p> <p>8 Q. All right. It's a long document, so</p> <p>9 I'm just going to ask you about a couple small</p> <p>10 portions of this document.</p> <p>11 If you could -- and you -- I'm</p> <p>12 sorry. Before I go to the specific page, you</p> <p>13 had indicated earlier that you had reviewed</p> <p>14 this, at least a portion of this, as part of</p> <p>15 your work in this case, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you can go to Page 19, and it</p> <p>18 should be Chapter 3, "Lost Profits As a Measure</p> <p>19 of Damages."</p> <p>20 A. All right. Yes. I'm there.</p> <p>21 Q. All right. And the second</p> <p>22 paragraph, it says: "As a measure of</p>	<p style="text-align: right;">Page 228</p> <p>1 this line above the -- above the X axis that</p> <p>2 reflects profits, but in -- because of</p> <p>3 Smartmatic's USA's situation, they are below</p> <p>4 the X axis. They don't have profits.</p> <p>5 So it's -- it's basically, you know,</p> <p>6 less of a loss, more of a loss. It's -- it's</p> <p>7 a -- we're not even in the realm of this</p> <p>8 theoretical -- this guidance that AICPA is</p> <p>9 putting out. It's -- and it's ignoring -- it's</p> <p>10 untethered to the reality of the -- the stark</p> <p>11 business operations and performance of</p> <p>12 Smartmatic. And I can't just suspend my</p> <p>13 disbelief for you because you want to pretend</p> <p>14 that some profits are emerging from this</p> <p>15 company or revenues are emerging from this</p> <p>16 company. Revenues were depleting and -- and</p> <p>17 running off so --</p> <p>18 Q. My -- my -- again, my question -- so</p> <p>19 this is a simple yes-or-no question.</p> <p>20 Yes or no; did you conduct an</p> <p>21 analysis into what Smartmatic's revenues would</p> <p>22 have been but for Mr. Lindell's defamatory</p>

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<p style="text-align: right;">Page 229</p> <p>1 statements?</p> <p>2 MR. KACHOUROFF: Objection. That's</p> <p>3 been asked and answered.</p> <p>4 THE WITNESS: What is the but for?</p> <p>5 Because if you're doing the but-for</p> <p>6 hypothetical, I must insist that my -- my</p> <p>7 assertions are reality. They're not</p> <p>8 hypothetical. You -- you can't -- you cannot</p> <p>9 make up revenues from a company who doesn't</p> <p>10 have the resources to produce those revenues.</p> <p>11 If -- you know.</p> <p>12 And this is another glaring massive</p> <p>13 deficiency of the -- of the plaintiffs'</p> <p>14 experts. They can just -- they're trying to</p> <p>15 just pretend that things emerge out of the</p> <p>16 blue. They don't emerge out of the blue. You</p> <p>17 actually have to have the resources and the</p> <p>18 people and the money and the capital to make it</p> <p>19 happen. You have to have product to make it</p> <p>20 happen. You have to have demand to make it</p> <p>21 happen. Smartmatic had none of it. They had</p> <p>22 no capital. They had a product that was not --</p>	<p style="text-align: right;">Page 231</p> <p>1 drivers here.</p> <p>2 This is -- what you are asserting is</p> <p>3 just total fantasy. There -- there -- there</p> <p>4 weren't any meaningful revenues, and there were</p> <p>5 meaningful losses. There's still massive</p> <p>6 losses for this company. They caught -- the</p> <p>7 auditor is right. It's got -- it's got a risk</p> <p>8 that it's not going to be in business. When</p> <p>9 you have that risk, you don't assign any value</p> <p>10 to expected persistency. There is no</p> <p>11 persistency. Nothing is -- nothing is there to</p> <p>12 persist.</p> <p>13 So, yes, I did the analysis, and</p> <p>14 yes, I believe there -- there is no -- there is</p> <p>15 no damage from -- from this, so you know --</p> <p>16 Q. So if I'm -- if I'm understanding</p> <p>17 your answer here, is it your opinion but for</p> <p>18 Smartmatic -- but for Mr. Lindell's defamatory</p> <p>19 statements, that Smartmatic USA revenues would</p> <p>20 be zero? Is that what you're saying?</p> <p>21 A. Very tiny, tiny amounts. It was --</p> <p>22 what? -- a few million dollars in revenues.</p>
<p style="text-align: right;">Page 230</p> <p>1 not received so --</p> <p>2 BY MR. LETKEWICZ:</p> <p>3 Q. Again --</p> <p>4 A. -- my answer to the question --</p> <p>5 my --</p> <p>6 Q. -- all I am asking for is -- all I'm</p> <p>7 asking for is -- all I'm asking for is: Have</p> <p>8 you conducted an analysis; yes or no?</p> <p>9 A. I did -- I did analyze it, yes.</p> <p>10 Q. Okay. And what did you determine</p> <p>11 Smartmatic's but-for revenues would be but for</p> <p>12 Mr. Lindell's defamatory statements?</p> <p>13 A. What's a but for?</p> <p>14 Q. Meaning if Mr. Lindell did not make</p> <p>15 these defamatory statements, did you do an</p> <p>16 analysis as to what Smartmatic's revenues would</p> <p>17 have been?</p> <p>18 A. So, yes, I did, and -- and if</p> <p>19 you're -- if you're defining the but for to be</p> <p>20 in that particular way, you -- you fail to --</p> <p>21 you fail to recognize that there are larger</p> <p>22 more important but fors that are the big</p>	<p style="text-align: right;">Page 232</p> <p>1 Q. Okay. Where -- where in your report</p> <p>2 can I find what Smartmatic's revenue would have</p> <p>3 been but for the defendants' conduct in this</p> <p>4 case.</p> <p>5 A. There is no -- there is no specific</p> <p>6 listing in my report of the exact dollar amount</p> <p>7 of what would have happened with or without</p> <p>8 statements by Lindell. The more meaningful</p> <p>9 and -- the more meaningful analysis is that</p> <p>10 there was very little revenue to begin with,</p> <p>11 that the company was in a -- effectively in a</p> <p>12 runoff mode, and that is the larger driver of</p> <p>13 this -- of this situation. You know --</p> <p>14 Q. You understand --</p> <p>15 A. Go ahead.</p> <p>16 Q. You understand the AICPA is saying</p> <p>17 here is that in calculating lost profits, the</p> <p>18 first thing you do is to determine what</p> <p>19 Smartmatic -- or what the plaintiffs' revenues</p> <p>20 would have been but for the defendants'</p> <p>21 conduct. You understand that is the first step</p> <p>22 that is being described here in this AICPA</p>

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<p style="text-align: right;">Page 233</p> <p>1 guidance?</p> <p>2 A. Sure, but that's -- that's in an</p> <p>3 academic world. I am operating in the real</p> <p>4 world here. Okay.</p> <p>5 Q. So -- well, are you saying then,</p> <p>6 sir, that the -- that this AICPA guidance is</p> <p>7 not an authoritative source that an expert can</p> <p>8 rely on in calculating lost profits?</p> <p>9 MR. KACHOUROFF: Object to the form.</p> <p>10 THE WITNESS: It's an authoritative</p> <p>11 source that people can rely on, but they have</p> <p>12 to do it in -- in a -- and apply it reasonably</p> <p>13 to the actual circumstances that are happening</p> <p>14 in the real world.</p> <p>15 And that's the -- that's the</p> <p>16 fundamental disconnect here. Smartmatic is</p> <p>17 basically trying to pretend that -- that there</p> <p>18 is -- you know, the sky is blue, and it's not</p> <p>19 blue. It's, like, dark and dreary. So it's</p> <p>20 pretend.</p> <p>21 BY MR. LETKEWICZ:</p> <p>22 Q. You understood -- so if we go to</p>	<p style="text-align: right;">Page 235</p> <p>1 in there.</p> <p>2 Q. Yeah. And so you would say this</p> <p>3 supports your ultimate opinion that we've</p> <p>4 talked about today that the defendants did not</p> <p>5 cause damage to Smartmatic, correct?</p> <p>6 A. I -- it's not directly. Not</p> <p>7 directly. I mean --</p> <p>8 Q. Now, sir -- well, you understand,</p> <p>9 sir, that these different forecasted -- you</p> <p>10 characterize what you say is forecast revenue.</p> <p>11 A. Uh-huh.</p> <p>12 Q. That was based on a presumption of</p> <p>13 there being no defamatory statements by the</p> <p>14 defendants. Do you understand that?</p> <p>15 A. It had a lot of presumptions in it.</p> <p>16 I do know that was one of them, but it -- it</p> <p>17 just was fundamentally flawed in many respects,</p> <p>18 on market share, on growth. You know, this --</p> <p>19 Q. And --</p> <p>20 A. -- it's just -- it's -- it's a</p> <p>21 fantasy, a total fantasy.</p> <p>22 Q. And -- well, okay. I understand you</p>
<p style="text-align: right;">Page 234</p> <p>1 your table here, this Table 5, and you have</p> <p>2 table of forecast revenue and then actual</p> <p>3 revenue.</p> <p>4 A. Based on it, yes.</p> <p>5 Q. And so -- and you believe, as I</p> <p>6 understand it from your testimony today, that</p> <p>7 this is one of the reasons why the defendants</p> <p>8 did not cause Smartmatic any harm; is that</p> <p>9 correct?</p> <p>10 MR. KACHOUROFF: Objection to form.</p> <p>11 THE WITNESS: No, I don't agree with</p> <p>12 that statement. What -- so it's not --</p> <p>13 BY MR. LETKEWICZ:</p> <p>14 Q. Well, I am trying to understand then</p> <p>15 what the purpose of that Table 5 is then.</p> <p>16 A. Oh, it's showing -- it's showing --</p> <p>17 I guess it was maybe Tammy -- Tammy Patrick or</p> <p>18 something that was putting together this, like,</p> <p>19 projected revenues, and they -- they just show</p> <p>20 how disconnected they were to reality --</p> <p>21 Q. And so --</p> <p>22 A. -- and you see the variances I put</p>	<p style="text-align: right;">Page 236</p> <p>1 think it's a fantasy.</p> <p>2 But, again, you understand that one</p> <p>3 of the factors that went into this forecast</p> <p>4 revenue is that there would not have been any</p> <p>5 defamatory statements by the defendants, right?</p> <p>6 A. That there would not have been?</p> <p>7 Q. Yes.</p> <p>8 A. Sure. Maybe that's a possible --</p> <p>9 possible thing, right.</p> <p>10 Q. And these XO -- and you understand,</p> <p>11 sir, that Smartmatic alleges that Mr. Lindell</p> <p>12 began making defamatory statements about</p> <p>13 Smartmatic in 2021, correct?</p> <p>14 A. I've heard that allegation. Don't</p> <p>15 agree with it.</p> <p>16 Q. Okay. And the -- these actual</p> <p>17 revenue figures, you know, take into account</p> <p>18 what has actually occurred from a financial</p> <p>19 perspective after Mr. Lindell's statement,</p> <p>20 correct?</p> <p>21 A. I don't think that is correct. So</p> <p>22 what -- what you're talking about is actual.</p>

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<p style="text-align: right;">Page 237</p> <p>1 My actual --</p> <p>2 Q. So --</p> <p>3 A. -- is those that actually happened.</p> <p>4 Q. Right. So you have actual revenues.</p> <p>5 So you have 25 million actual revenue in 2021,</p> <p>6 so that was Smartmatic's actual revenue in the</p> <p>7 real world --</p> <p>8 A. Yes. Yes.</p> <p>9 Q. -- in 2021, correct?</p> <p>10 A. Yes. Yes.</p> <p>11 Q. And their revenue of 38.5 million in</p> <p>12 2022 was their revenue in -- was their actual</p> <p>13 revenue, correct?</p> <p>14 A. Perhaps. Maybe.</p> <p>15 Q. Maybe. So -- so -- well, what was</p> <p>16 Smartmatic's actual revenue in 2022 if it</p> <p>17 wasn't 38.5 million, as you state here?</p> <p>18 A. So we didn't get the attribution of</p> <p>19 the components of the revenue, and it appeared</p> <p>20 to be maybe some transfer pricing from</p> <p>21 affiliates that might have juiced that number.</p> <p>22 So I don't know what is truly organic revenue</p>	<p style="text-align: right;">Page 239</p> <p>1 A. So let's just agree to disagree on</p> <p>2 this. How about that? Because if you want me</p> <p>3 to pretend that all these other assumptions</p> <p>4 aren't in play but only one assumption is in</p> <p>5 play, I can't play that game.</p> <p>6 The bigger drivers are that the</p> <p>7 revenue -- it was deteriorating, that you could</p> <p>8 see it in the deferred revenues being cleared</p> <p>9 out of the pipeline, they had no persistency,</p> <p>10 they were on fumes. And there is no reasonable</p> <p>11 basis for that forecast that I have referred to</p> <p>12 in my report. Nothing reasonable about it</p> <p>13 whatsoever.</p> <p>14 So you can -- just playing the --</p> <p>15 playing these hypothetical games isolating just</p> <p>16 one assumption at the expense of all the other</p> <p>17 assumptions is -- is -- is a lie to -- to a</p> <p>18 jury. You guys want to go in and pretend to</p> <p>19 lie to a jury. I -- I can't do that. I have</p> <p>20 to tell the truth. Okay.</p> <p>21 So the truth is their revenues were</p> <p>22 depleting. They were in runoff mode. I can't</p>
<p style="text-align: right;">Page 238</p> <p>1 and what's manipulated revenue.</p> <p>2 But let's put that aside. I see</p> <p>3 that it was 38 million put on their financial</p> <p>4 statements.</p> <p>5 Q. Right. And then -- and then the</p> <p>6 forecasted revenue was not based on the</p> <p>7 defendants' conduct but a hypothetical scenario</p> <p>8 in which the defendants did not make defamatory</p> <p>9 statements about Smartmatic. You understand</p> <p>10 that, correct?</p> <p>11 A. I -- I don't understand that, and I</p> <p>12 don't -- I don't agree with the numbers. I</p> <p>13 think they're a fantasy.</p> <p>14 Q. I understand --</p> <p>15 A. There is no -- there's nothing that</p> <p>16 supports it.</p> <p>17 Q. I understand, sir, you don't agree</p> <p>18 with the numbers.</p> <p>19 But my question is that one of the</p> <p>20 assumptions into these numbers was that there</p> <p>21 would have been no defamatory statements by Mr.</p> <p>22 Lindell, correct?</p>	<p style="text-align: right;">Page 240</p> <p>1 ignore that. You guys can try to do that all</p> <p>2 you want, but I -- I can't.</p> <p>3 MR. LETKEWICZ: All right. Can</p> <p>4 you -- it looks he's -- can you share your</p> <p>5 screen and put Tab 19 on the screen, and we</p> <p>6 will mark that as Plaintiffs' Exhibit 685.</p> <p>7 (Deposition Exhibit 685 was marked</p> <p>8 for identification.)</p> <p>9 THE WITNESS: Thank you.</p> <p>10 BY MR. LETKEWICZ:</p> <p>11 Q. All right. So Plaintiffs' Exhibit</p> <p>12 --</p> <p>13 A. Is it up?</p> <p>14 Q. It's up. Do you see it?</p> <p>15 A. No. Where -- how do I get it on my</p> <p>16 --</p> <p>17 Q. We're sharing the screen. I see it</p> <p>18 in front of my screen right now.</p> <p>19 A. Okay. Here we go. Yep.</p> <p>20 Q. Okay. And so Plaintiffs' Exhibit</p> <p>21 685, this is Plaintiffs' six supplemental</p> <p>22 answers and objections to defendant My Pillow,</p>

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<p style="text-align: right;">Page 241</p> <p>1 Inc.'s first set of interrogatories.</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. And this is something that you have</p> <p>5 reviewed as part of your work in this case,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 MR. LETKEWICZ: All right. Jane,</p> <p>9 please go to Page 26.</p> <p>10 BY MR. LETKEWICZ:</p> <p>11 Q. All right. Interrogatory 20 asked:</p> <p>12 "Provide an itemized list of all damages that</p> <p>13 you allege the defendants have caused you."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. All right. So it's a rather lengthy</p> <p>17 document, so I will just direct your attention</p> <p>18 to -- let's see here.</p> <p>19 MR. LETKEWICZ: So let's just start</p> <p>20 at -- go to Page 31.</p> <p>21 BY MR. LETKEWICZ:</p> <p>22 Q. Page 31 is the fourth supplemental</p>	<p style="text-align: right;">Page 243</p> <p>1 don't agree with the numbers, but that's where</p> <p>2 the numbers are coming from. That's all that I</p> <p>3 am asking for right now.</p> <p>4 A. It's just like anybody can write</p> <p>5 stuff on paper. Exactly.</p> <p>6 Q. And you then compare that to the</p> <p>7 actual revenue Smartmatic earned in '21 and</p> <p>8 '22, correct?</p> <p>9 A. Right.</p> <p>10 Q. And you understand --</p> <p>11 A. USA -- I thought it was USA, right?</p> <p>12 Q. Correct.</p> <p>13 A. Yeah.</p> <p>14 Q. And you understand, sir, that -- as</p> <p>15 we've talked about, that Smartmatic alleges</p> <p>16 that Mr. Lindell made defamatory statements</p> <p>17 about Smartmatic in January 2021? I understand</p> <p>18 you don't agree with the allegation. I</p> <p>19 understand. But you understand that is an</p> <p>20 allegation made by Smartmatic, correct?</p> <p>21 A. Yes.</p> <p>22 Q. So by comparing the -- these</p>
<p style="text-align: right;">Page 242</p> <p>1 answer. Do you see that?</p> <p>2 A. Yes. Yes.</p> <p>3 Q. Okay. Let's go to Page 33, and it</p> <p>4 says at about four, five -- well, actually, six</p> <p>5 lines from the bottom here: "Assuming</p> <p>6 Smartmatic maintained a 21.3 percent market</p> <p>7 share in 2021 through 2025, Smartmatic would</p> <p>8 have earned but for the disinformation campaign</p> <p>9 that defendants participated in approximately</p> <p>10 652.1 million from 2021 to 2025." And it</p> <p>11 breaks out that \$652.1 million figure by year.</p> <p>12 Do you see that?</p> <p>13 A. Yes --</p> <p>14 Q. And --</p> <p>15 A. -- and those are the numbers I</p> <p>16 put --</p> <p>17 Q. Yeah.</p> <p>18 A. I put those into my -- my Table 5.</p> <p>19 Q. Correct. So these figures were what</p> <p>20 Smartmatic estimates its damages -- or I'm</p> <p>21 sorry. Not damages -- its revenue would have</p> <p>22 been but for the campaign -- I understand you</p>	<p style="text-align: right;">Page 244</p> <p>1 projected revenues but for the disinformation</p> <p>2 campaign that the defendants participated in</p> <p>3 versus the actual revenues that Smartmatic</p> <p>4 actually earned is not an apples-to-apples</p> <p>5 comparison, correct?</p> <p>6 A. What -- what is not apples to</p> <p>7 apples?</p> <p>8 Q. The fact that you are comparing that</p> <p>9 what you call the forecasted revenues to what</p> <p>10 were Smartmatic's actual revenue in '21 and</p> <p>11 '22?</p> <p>12 A. They are not apples to apples.</p> <p>13 That's correct.</p> <p>14 Q. All right.</p> <p>15 A. One -- one is forecasted revenues,</p> <p>16 and one is actual revenues. They are, by</p> <p>17 design, different.</p> <p>18 Q. All right. Let's go --</p> <p>19 MR. LETKEWICZ: You can take that</p> <p>20 down, Jane.</p> <p>21 BY MR. LETKEWICZ:</p> <p>22 Q. Let's go back to your report. And,</p>

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<p style="text-align: right;">Page 245</p> <p>1 now, one of the other bases that we have talked</p> <p>2 about today for your opinion that defendants</p> <p>3 did not cause any harm to Smartmatic are the</p> <p>4 internal -- are internal communications that</p> <p>5 you cite in your report, correct?</p> <p>6 A. Yes.</p> <p>7 MR. LETKEWICZ: And, Jane, can we</p> <p>8 put the report on the screen, and if you can</p> <p>9 scroll down to Paragraph 29.</p> <p>10 BY MR. LETKEWICZ:</p> <p>11 Q. All right. And you cite these</p> <p>12 communications, I believe, in paragraphs 29 to</p> <p>13 34 --</p> <p>14 MR. LETKEWICZ: You can scroll</p> <p>15 through that, Jane, to show him that.</p> <p>16 BY MR. LETKEWICZ:</p> <p>17 Q. -- correct?</p> <p>18 A. Yes.</p> <p>19 MR. LETKEWICZ: And then scroll down</p> <p>20 to Paragraph 51.</p> <p>21 BY MR. LETKEWICZ:</p> <p>22 Q. And in Paragraph 51 through, I</p>	<p style="text-align: right;">Page 247</p> <p>1 communications that you looked at, correct?</p> <p>2 A. Really, really driven by their</p> <p>3 direct -- the direct words in the e-mails, but</p> <p>4 I just sort of summarized it right there.</p> <p>5 Q. Sure. So you drew this conclusion</p> <p>6 about chaos and panic based on your</p> <p>7 interpretation of the Smartmatic internal</p> <p>8 communications you cited in your report,</p> <p>9 correct?</p> <p>10 A. I did write that in my report.</p> <p>11 Q. And that was based on your</p> <p>12 interpretation of the documents you reviewed in</p> <p>13 this case, correct?</p> <p>14 A. Yeah, but it was -- it was -- there</p> <p>15 wasn't much interpreting. The words -- the</p> <p>16 words in those e-mails sort of speak for</p> <p>17 themselves, but -- but I just did it to</p> <p>18 summarize it.</p> <p>19 Q. Well, sir, you say that the words --</p> <p>20 sir, you say that the words speak for</p> <p>21 themselves. I don't believe in any of those</p> <p>22 documents the word chaos or panic is used.</p>
<p style="text-align: right;">Page 246</p> <p>1 believe, 68, yes, you cite additional internal</p> <p>2 Smartmatic communications.</p> <p>3 MR. LETKEWICZ: And, Jane, just</p> <p>4 scroll through so he can see them.</p> <p>5 THE WITNESS: Okay.</p> <p>6 BY MR. LETKEWICZ:</p> <p>7 Q. So from my count, I think I saw</p> <p>8 about 20 or so communications that you cite in</p> <p>9 your report. Does that sound about right?</p> <p>10 A. Maybe -- maybe a little -- that's</p> <p>11 about right. Maybe fewer. A little bit fewer.</p> <p>12 MR. LETKEWICZ: And, Jane, can you</p> <p>13 scroll up to Paragraph 28, please.</p> <p>14 BY MR. LETKEWICZ:</p> <p>15 Q. And in Paragraph 28, you state:</p> <p>16 "Smartmatic executive internal communications</p> <p>17 show chaos and panic between 2018 and 2020</p> <p>18 concerning the company's future existence."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. That was based on your</p> <p>22 interpretation of the Smartmatic internal</p>	<p style="text-align: right;">Page 248</p> <p>1 Correct me if I am wrong.</p> <p>2 A. Okay. All right. I'll take your</p> <p>3 word for it.</p> <p>4 Q. Okay. So your characterization of</p> <p>5 chaos and panic is your interpretation of the</p> <p>6 documents you reviewed in this case, correct?</p> <p>7 MR. KACHOUROFF: Objection to form.</p> <p>8 THE WITNESS: Okay.</p> <p>9 BY MR. LETKEWICZ:</p> <p>10 Q. Is the answer okay?</p> <p>11 A. Yes, it's okay.</p> <p>12 Q. So yes?</p> <p>13 MR. KACHOUROFF: Same objection.</p> <p>14 THE WITNESS: Yeah. I just -- I'll</p> <p>15 just -- I did --</p> <p>16 MR. KACHOUROFF: He's -- he's</p> <p>17 already admitted that's his conclusion based on</p> <p>18 the e-mails. That's what you want him to say.</p> <p>19 THE WITNESS: It's a summation --</p> <p>20 it's a summation of the dozens of e-mails or</p> <p>21 whatever. And there's more in there. I just</p> <p>22 picked out, like, some highlights so -- but go</p>

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<p style="text-align: right;">Page 249</p> <p>1 ahead.</p> <p>2 BY MR. LETKEWICZ:</p> <p>3 Q. And, now -- now, again, we talked</p> <p>4 about earlier that Smartmatic has produced over</p> <p>5 1.2 million documents, and I believe earlier</p> <p>6 you indicated that of those documents you</p> <p>7 reviewed approximately 80 to 100 of those; is</p> <p>8 that correct?</p> <p>9 A. That's -- that sounds about right.</p> <p>10 MR. LETKEWICZ: You can take that</p> <p>11 document down for the moment, Jane.</p> <p>12 BY MR. LETKEWICZ:</p> <p>13 Q. One of the other bases for your</p> <p>14 opinion that Smartmatic -- strike that.</p> <p>15 One of the other bases that you</p> <p>16 mentioned today about why the defendants did</p> <p>17 not cause Smartmatic any damages is the ongoing</p> <p>18 DOJ investigation in Smartmatic, correct?</p> <p>19 MR. KACHOUROFF: Objection to form.</p> <p>20 THE WITNESS: The -- The DOJ</p> <p>21 investigation did happen during -- during the</p> <p>22 time period we're looking at for the financial</p>	<p style="text-align: right;">Page 251</p> <p>1 ways. They can't -- they can't on the one hand</p> <p>2 say that selected bad news, bad reputational</p> <p>3 news doesn't affect them but, on the other</p> <p>4 hand, you know, having their feelings hurt does</p> <p>5 affect them.</p> <p>6 I think -- I think the materiality</p> <p>7 of a DOJ investigation related to bribery or</p> <p>8 whatever was alleged in -- in Philippines is</p> <p>9 going to have a much bigger impact than</p> <p>10 whatever statements, bland, innocuous</p> <p>11 statements were made by Mike Lindell.</p> <p>12 Q. So my question was: Are you aware</p> <p>13 of a single contract Smartmatic lost because of</p> <p>14 this DOJ investigation?</p> <p>15 A. So I'll just stick with my answer</p> <p>16 that I gave already.</p> <p>17 Q. Which is no?</p> <p>18 A. That the news of DOJ investigating</p> <p>19 this -- Smartmatic likely had an adverse impact</p> <p>20 on their contracting.</p> <p>21 Q. I understand that that is an opinion</p> <p>22 you have, but my question is a little</p>
<p style="text-align: right;">Page 250</p> <p>1 analysis.</p> <p>2 BY MR. LETKEWICZ:</p> <p>3 Q. Sure. And -- and -- and as I</p> <p>4 understood your -- some of your prior</p> <p>5 testimony, that is one of the reasons why you</p> <p>6 have concluded that defendants did not cause</p> <p>7 Smartmatic any damages; is that correct?</p> <p>8 A. Yes. Correct.</p> <p>9 Q. And are you aware of a single</p> <p>10 potential customer of Smartmatic who refused to</p> <p>11 or was reluctant to do business with Smartmatic</p> <p>12 because of the DOJ investigation?</p> <p>13 A. No.</p> <p>14 Q. Are you aware of any contract</p> <p>15 Smartmatic lost because of the DOJ</p> <p>16 investigation?</p> <p>17 A. There was nothing reported about</p> <p>18 that in -- in -- in the e-mails that I saw.</p> <p>19 Q. So no, you're -- you're not aware of</p> <p>20 one?</p> <p>21 A. Not aware, so you know, if you -- if</p> <p>22 you go down -- Smartmatic cannot have it both</p>	<p style="text-align: right;">Page 252</p> <p>1 different. I am asking you: Can you identify</p> <p>2 a single contract, any contract, that</p> <p>3 Smartmatic lost that you know of because of the</p> <p>4 DOJ investigation?</p> <p>5 A. I can't identify any particular</p> <p>6 contract that was lost because of the DOJ</p> <p>7 investigation.</p> <p>8 Q. All right. One of the other bases</p> <p>9 that we talked about sort of for a brief moment</p> <p>10 this morning as to why the defendants did not</p> <p>11 cause Smartmatic any damages is that Smartmatic</p> <p>12 is focused on lawsuits and not its business,</p> <p>13 correct?</p> <p>14 A. That seems like they -- they've</p> <p>15 changed their business model to be lawsuit --</p> <p>16 lawsuits only.</p> <p>17 Q. Yeah. I think you had indicated</p> <p>18 that their business now is lawsuits; is that</p> <p>19 correct?</p> <p>20 A. By and large, yes.</p> <p>21 MR. LETKEWICZ: Can you put his</p> <p>22 report back on the screen, please. All right.</p>

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<p style="text-align: right;">Page 253</p> <p>1 And go to Paragraph 42, please.</p> <p>2 BY MR. LETKEWICZ:</p> <p>3 Q. All right. And the last sentence of</p> <p>4 Paragraph 42, it says: "At present it appears</p> <p>5 that Smartmatic is banking on lawsuits as a</p> <p>6 source of revenue," correct?</p> <p>7 A. Yes.</p> <p>8 Q. And, now, in that particular</p> <p>9 statement, you do not cite a Smartmatic</p> <p>10 document, correct?</p> <p>11 A. I think I refer to -- one of the</p> <p>12 things that impacted me was a Smartmatic press</p> <p>13 release about getting money from Reid Hoffman.</p> <p>14 Q. Okay. So is it your opinion then --</p> <p>15 so strike that.</p> <p>16 Is it your basis that Smartmatic is</p> <p>17 banking on lawsuits as a source of revenue</p> <p>18 based -- based solely on a press release from</p> <p>19 Reid Hoffman that he was financing Smartmatic</p> <p>20 lawsuits?</p> <p>21 A. No. I -- I just -- I recalled</p> <p>22 there's other -- there were other documents at</p>	<p style="text-align: right;">Page 255</p> <p>1 They basically just -- yeah. So</p> <p>2 that's another -- another area. The financial</p> <p>3 statements -- the Smartmatic documents that</p> <p>4 I -- that showed it really simply are the</p> <p>5 financial statements themselves. They just</p> <p>6 show revenues tailing off from, you know,</p> <p>7 their -- what used to be their business in</p> <p>8 election systems or whatever contract they had</p> <p>9 with L.A. There is not much of that left.</p> <p>10 They're just -- it's all, like I said, in</p> <p>11 runoff. And all the financial information</p> <p>12 shows -- it's Smartmatic documents again</p> <p>13 showing that they've -- they've morphed into a</p> <p>14 lawsuit company.</p> <p>15 Q. So your basis that Smartmatic has</p> <p>16 morphed into a lawsuit company is a press</p> <p>17 release from Reid Hoffman, lawsuit financing</p> <p>18 contracts, and Smartmatic's financial</p> <p>19 statements; is that it?</p> <p>20 A. I would add -- yes, that's correct.</p> <p>21 That's correct.</p> <p>22 But there's more. I would look at</p>
<p style="text-align: right;">Page 254</p> <p>1 Smartmatic that showed me how the business</p> <p>2 has -- has sort of morphed into a lawsuit</p> <p>3 business.</p> <p>4 Q. What --</p> <p>5 A. Okay. So a set of those are</p> <p>6 these -- these lawsuit financing contracts</p> <p>7 where there is -- you know, I don't know --</p> <p>8 half a dozen, dozen borrowings by people hoping</p> <p>9 to profit from the lawsuit, and they have,</p> <p>10 like, a kicker. It's not -- it's not just an</p> <p>11 interest rate. There is, like, a bonus that's</p> <p>12 built into the contracts.</p> <p>13 So all -- all of -- all of</p> <p>14 Smartmatic's, like, recent financing activity</p> <p>15 maybe in the last two or three years has been</p> <p>16 just funding lawsuits, and they're -- they're</p> <p>17 doing -- doing -- raising money based on that.</p> <p>18 So those are -- those are really big tells</p> <p>19 that -- that Smartmatic is spending all its</p> <p>20 time on -- on -- on litigation, not on trying</p> <p>21 to solve the fundamental product -- problems in</p> <p>22 their products.</p>	<p style="text-align: right;">Page 256</p> <p>1 the internal e-mails that are referred to in my</p> <p>2 report. Those -- those show the struggling.</p> <p>3 They show the products not being received well,</p> <p>4 that the -- that the competition is just eating</p> <p>5 Smartmatic's lunch. They -- they don't have</p> <p>6 certain EACs -- nobody is buying their product</p> <p>7 anymore because it's not certified, doesn't fit</p> <p>8 the market, it's not comprehensive, their</p> <p>9 competitors are better capitalized. Smartmatic</p> <p>10 is not capitalized, has negative equity.</p> <p>11 You know, you can't just -- you</p> <p>12 can't just assume -- assume it's a Ferrari when</p> <p>13 you've got, like, an AMC Gremlin in your</p> <p>14 garage.</p> <p>15 Q. Which internal e-mail did you cite</p> <p>16 in your report, because I think I missed this,</p> <p>17 where someone at Smartmatic said we are no</p> <p>18 longer in the election, equipment and services</p> <p>19 business; we are in the lawsuit business? Did</p> <p>20 you see such internal communications because I</p> <p>21 don't recall seeing such communications cited</p> <p>22 in your report.</p>

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<p style="text-align: right;">Page 257</p> <p>1 A. Come on. Read what I referred to in 2 the report. They are basically admitting to 3 being third place in their bidding. They can't 4 bid in so many states because they're not 5 certified. That's what I am referring to. 6 Q. So you're saying -- you're saying 7 that -- 8 A. That's -- you can try -- you can try 9 to summarize it all you want, but -- but 10 that's -- that's their own words, in your own 11 Smartmatic exec's words telling us that 12 they're in runoff mode. 13 Q. Well, let me ask you this: I mean, 14 are you aware -- did you cite a single 15 Smartmatic internal communication where a 16 Smartmatic person said we are in runoff mode? 17 A. This is a stupid question. It's a 18 stupid question. Just look at the substance of 19 what I wrote. You want to -- 20 Q. Okay. Well, you keep saying it's in 21 runoff mode. Well, sir -- 22 A. Don't -- don't try to tell me what</p>	<p style="text-align: right;">Page 259</p> <p>1 effect in their e-mails. 2 Q. Okay. And what were those words? 3 A. I just referred in my report. Read 4 the internal e-mails about how they were losing 5 business. The competitors were cleaning their 6 clocks and they were -- they didn't get renewed 7 in L.A. Couldn't get certified in EAC. Had 8 basically said we can't -- we can't be devoted 9 to developing new products. We have to try to 10 sell whatever we have got now. So bail out -- 11 bail out of any new development. Just try to 12 sell existing stuff, which nobody wanted. 13 I'd be -- I'd be happy to get into a 14 lot of detail on that and read each one, but I 15 just don't want to take the time. You can just 16 read them, you know. You -- you know what's in 17 those e-mails. It's just quibbling about the 18 word "runoff" is sort of stupid. 19 Q. Are you aware of any Smartmatic 20 deposition testimony in which a Smartmatic 21 witness indicated that Smartmatic's strategy 22 was to close up normal operations?</p>
<p style="text-align: right;">Page 258</p> <p>1 I'm saying. Okay. Just read my report. You 2 want to try to box me into saying, oh, he 3 didn't say runoff or he didn't say -- doesn't 4 matter. It doesn't matter. 5 Q. Okay. Well, it doesn't matter. 6 So, sir, I mean, you say that the 7 documents speak for themselves and you keep 8 saying it's in runoff mode. So then there must 9 be an internal communication in your report, 10 and I must have missed it, where they said, you 11 know what? We are in runoff mode. 12 MR. KACHOUROFF: Objection to form. 13 You are being argumentative with him. Just be 14 respectful. Ask the question and move on? 15 THE WITNESS: I answered it. 16 Really. 17 BY MR. LETKEWICZ: 18 Q. So there is not a specific 19 communication -- you agree there is not a 20 specific communication where someone at 21 Smartmatic said we are in runoff mode? 22 A. No. There were words to similar</p>	<p style="text-align: right;">Page 260</p> <p>1 A. So they -- they did talk about -- 2 there was an internal strategic reorganization 3 document that said they were going to lay off a 4 bunch of people, and there was a reorganization 5 plan that the board considered. 6 Some of the board bailed out. Like, 7 I think your U.K. board people said we're just 8 getting off this sinking ship, so yeah. 9 Q. And, sir, my question was not about 10 Smartmatic internal documents. I was asking 11 about Smartmatic deposition testimony. 12 So you indicated, I believe toward 13 the beginning of your deposition today, that 14 you reviewed about a half a dozen deposition 15 transcripts. And in any of those deposition 16 transcripts, did any witness state that they -- 17 it was Smartmatic's strategy to close up normal 18 business operations? 19 A. I did not see those in the 20 depositions that I saw, and I'm not sure that 21 the depositions taken at that time would have 22 had the benefit of the internal e-mail</p>

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<p style="text-align: right;">Page 261</p> <p>1 disclosures for anybody to even ask Smartmatic</p> <p>2 people about that at the time.</p> <p>3 Had -- had -- if they were to go</p> <p>4 back -- and maybe we should -- if we were to go</p> <p>5 back and say, okay, by the way, we're still</p> <p>6 deposing you, and why is this e-mail saying</p> <p>7 you're about to do a massive strategic</p> <p>8 reorganization, shut down operations, you're</p> <p>9 not going to do any new product development,</p> <p>10 you're just going to try to sell what you have,</p> <p>11 maybe we'd get a different response.</p> <p>12 Q. Sure. Well, sir, are you aware of a</p> <p>13 single document that was shown at any of the</p> <p>14 six depositions that you reviewed?</p> <p>15 A. Yes. That deal -- that deal with</p> <p>16 what we're talking about right now?</p> <p>17 Q. Yeah.</p> <p>18 MR. KACHOUROFF: This -- this is</p> <p>19 outside the scope of his opinion.</p> <p>20 MR. LETKEWICZ: Yeah.</p> <p>21 MR. KACHOUROFF: You know, we can</p> <p>22 play the green-eyeshade, gotcha games all day</p>	<p style="text-align: right;">Page 263</p> <p>1 BY MR. LETKEWICZ:</p> <p>2 Q. Sir, have you done any analysis as</p> <p>3 to how much time Smartmatic employees are</p> <p>4 spending on the Smartmatic lawsuits and how</p> <p>5 much time they are spending on Smartmatic's</p> <p>6 business?</p> <p>7 A. You know, I thought of that.</p> <p>8 That's -- that's a great question, and I -- I</p> <p>9 just -- I look at all the time in the document</p> <p>10 production and the depositions and the courts,</p> <p>11 and it has to have a toll on -- I don't know.</p> <p>12 It seems like a lot of time on litigation to me</p> <p>13 for the -- for the folks. I don't know if it's</p> <p>14 a majority of their time. Just -- from --</p> <p>15 from -- again, I look at it from the kind of</p> <p>16 bottom up from the financial perspective.</p> <p>17 And I don't see any new revenues. I</p> <p>18 see runoff revenues, and by that -- I'm sorry</p> <p>19 to be using that term. You know, I know you</p> <p>20 don't like it term. But residual trailing</p> <p>21 revenues from the Los Angeles County contract.</p> <p>22 That's all they have, and those weren't --</p>
<p style="text-align: right;">Page 262</p> <p>1 long by asking him --</p> <p>2 THE WITNESS: Right.</p> <p>3 MR. KACHOUROFF: -- if he remembers</p> <p>4 documents from depositions. We're going to --</p> <p>5 MR. LETKEWICZ: Chris, I don't need</p> <p>6 the speaking objections. Just say --</p> <p>7 MR. KACHOUROFF: No. No. You're</p> <p>8 going to get my objection, and this is -- I'm</p> <p>9 asking you -- we can go off the record if you</p> <p>10 want. I don't care.</p> <p>11 At the end of the day, you're</p> <p>12 wasting time with all this stuff. I mean, get</p> <p>13 to your question. You can ask him the question</p> <p>14 and move on.</p> <p>15 THE WITNESS: And I would just --</p> <p>16 you're trying to put words in my mouth here,</p> <p>17 and I -- and I don't like that. And I'm just</p> <p>18 trying to -- I've tried -- I've answered these</p> <p>19 things a couple of times, and I'm trying to be,</p> <p>20 you know, thoughtful about your questions. You</p> <p>21 don't like the answers. Just say you don't</p> <p>22 like them and move on, I think.</p>	<p style="text-align: right;">Page 264</p> <p>1 those weren't even persistent revenues. They</p> <p>2 were sort of just one-time add-ons. That's all</p> <p>3 that has been -- that's all that has flowed</p> <p>4 through the financial statements.</p> <p>5 So from my view of the financial</p> <p>6 statements is this is a -- it's a dying entity.</p> <p>7 The basic operations are dying, and it seems</p> <p>8 like from the financial statements of all the</p> <p>9 capital raised that it's totally now morphed</p> <p>10 into predominantly a lawsuit operation.</p> <p>11 Q. But you did not look at any</p> <p>12 Smartmatic time records as to how Smartmatic</p> <p>13 employees were spending their time? That would</p> <p>14 be correct?</p> <p>15 A. No. If you got them, send them to</p> <p>16 me. But, no, I did not.</p> <p>17 Q. And did you do any analysis as to</p> <p>18 how much Smartmatic has spent in any year since</p> <p>19 filing its lawsuits against Fox News, Newsmax,</p> <p>20 and Mr. Lindell and on its -- in comparison to</p> <p>21 how much it spent on its business?</p> <p>22 A. I saw indications of it in -- in --</p>

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<p style="text-align: right;">Page 265</p> <p>1 in the cash flow statements that show it's the</p> <p>2 majority of their -- the majority of their</p> <p>3 financing is coming directly related to and for</p> <p>4 litigation expenses.</p> <p>5 If they didn't -- if they didn't</p> <p>6 have the litigation expenses, they might have</p> <p>7 actually shown a profit in one of those years.</p> <p>8 But, no, as far as, like, time, I</p> <p>9 don't have that visibility at this point on the</p> <p>10 relative time spent. It has got to be a lot.</p> <p>11 You know, hey, it's a competitive marketplace</p> <p>12 out there. If you -- if you -- if they're</p> <p>13 thinking they've got a shot, you're thinking</p> <p>14 you've got a shot trying to do this -- this --</p> <p>15 this shakedown, whatever. It's not illegal for</p> <p>16 you to do it.</p> <p>17 Q. So it's your opinion then that this</p> <p>18 Smartmatic lawsuit is a shakedown?</p> <p>19 A. Yes.</p> <p>20 MR. LETKEWICZ: All right. Can you</p> <p>21 put his report back on the screen.</p> <p>22 BY MR. LETKEWICZ:</p>	<p style="text-align: right;">Page 267</p> <p>1 prove this out if you send me 2024 financials.</p> <p>2 Q. Right. So you -- but you don't know</p> <p>3 how Smartmatic used or didn't use the OAN</p> <p>4 settlement, correct?</p> <p>5 A. My statement was a true statement.</p> <p>6 It's -- it's got to be these -- one of these</p> <p>7 three things or a combination of all of them.</p> <p>8 Q. And, again, you have not seen a</p> <p>9 specific document indicating that?</p> <p>10 A. No. Send me -- send me 2024</p> <p>11 financials, and then we can prove it. Can we</p> <p>12 get them?</p> <p>13 Q. One of the things that you've been</p> <p>14 talking about over the last hour is the fact of</p> <p>15 Smartmatic not having much deferred revenue</p> <p>16 after 2020. Do you recall that?</p> <p>17 A. Yes. I made a couple of references</p> <p>18 to that in the past hour, yes.</p> <p>19 Q. And you're aware, sir, that in order</p> <p>20 for Smartmatic to have deferred revenue it has</p> <p>21 to obtain contracts from customers, correct?</p> <p>22 A. Or in this case --</p>
<p style="text-align: right;">Page 266</p> <p>1 Q. All right. Can you go to Paragraph</p> <p>2 79.</p> <p>3 A. Okay.</p> <p>4 Q. All right. And then in 79 and then</p> <p>5 80, you say: "Smartmatic settled a lawsuit</p> <p>6 with One America News Network for an</p> <p>7 undisclosed sum. Smartmatic has spent that</p> <p>8 money on dividends to stockholders, transfers</p> <p>9 to affiliates, or to pay for ongoing litigation</p> <p>10 expenses."</p> <p>11 Do you see that?</p> <p>12 A. I do, yes.</p> <p>13 Q. And that's speculation on your -- on</p> <p>14 your part that Smartmatic spent the OAN</p> <p>15 settlement on dividends to stockholders,</p> <p>16 transfers to affiliates, or to pay for ongoing</p> <p>17 litigation expenses?</p> <p>18 A. Those are the only -- those are the</p> <p>19 likely uses of that money. Where else would it</p> <p>20 go? Is it sitting on the balance sheet? It</p> <p>21 doesn't look like it's sitting on the balance</p> <p>22 sheet. I don't have 2024 financials, so we can</p>	<p style="text-align: right;">Page 268</p> <p>1 MR. KACHOUROFF: Hold on. Wait.</p> <p>2 Wait, Robert. Let me make my objection.</p> <p>3 Objection to form, and objection to</p> <p>4 the question assuming that they don't have</p> <p>5 customers. They have government contracts.</p> <p>6 BY MR. LETKEWICZ:</p> <p>7 Q. Okay. Answer the question.</p> <p>8 A. So I'm aware of one government</p> <p>9 contract. That's it, and it appears to be in a</p> <p>10 residual wind-down trailing mode, and that's</p> <p>11 reflected in the accounting for deferred</p> <p>12 revenues.</p> <p>13 Q. But you would agree, sir, that</p> <p>14 Smartmatic cannot defer revenues for contracts</p> <p>15 it has not yet obtained, correct?</p> <p>16 A. Yes, that's true. You -- so it's a</p> <p>17 good thing that you bring that up. Yes. You</p> <p>18 cannot count your chickens before they're</p> <p>19 hatched. Yet Smartmatic is doing exactly that</p> <p>20 in this lawsuit, counting chickens that are --</p> <p>21 are ill and dying.</p> <p>22 So, yes, you're right. But let's</p>

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<p style="text-align: right;">Page 269</p> <p>1 apply it across this whole thing. This whole 2 thing is a charade of pretend. 3 Q. So one of the other bases that 4 you've also referred to in the past hour and 5 earlier today as to why the defendants did not 6 cause any of Smartmatic's damages is that 7 Smartmatic's -- Smartmatic was outperformed by 8 its competitors which, in your view, had 9 superior products or were better at capturing 10 government contracts, correct? 11 A. That was not my view. That was 12 Smartmatic's employees' view. 13 Q. Have -- have you -- let's -- 14 actually, I'll anchor my next question. 15 MR. LETKEWICZ: Can you put his 16 report back up on the screen. 17 BY MR. LETKEWICZ: 18 Q. Or -- or if you're able to refer to 19 it, I won't have to put it back on the screen. 20 A. Go ahead. Yeah, I've got it up. 21 Q. Sure. 22 A. What is it.</p>	<p style="text-align: right;">Page 271</p> <p>1 piece of that, but they didn't have a 2 comprehensive solution that the government's -- 3 the state election people wanted. They wanted, 4 you know, a bigger scale product that covered a 5 lot of things and -- and then that Smartmatic 6 was sort of relegated to, like, this little 7 niche thing here, like, the -- the Voting 8 Systems For All People thing in L.A. 9 Q. What do you mean by a "comprehensive 10 batch"? 11 A. Okay. From -- I guess what I meant 12 is that they have the tabulators, the election 13 management systems, the e-poll books. If there 14 were a requirement to have a ballot marking 15 device, they would also have a ballot marking 16 device. 17 So they -- they had the full array 18 -- these other larger competitors, 19 well-capitalized competitors, had and have all 20 those components. And my understanding is that 21 Smartmatic did not have all those components. 22 Q. And during what time frame did</p>
<p style="text-align: right;">Page 270</p> <p>1 Q. Yeah. If you can go to Paragraph 2 23. 3 A. Okay. I'm there. 4 Q. All right. And you say: "Starting 5 in 2018 and getting worse in 2019, Smartmatic 6 USA has been outperformed by its competitors 7 ES&S, Dominion, and Hart InterCivic, which 8 apparently had superior products or were better 9 at capturing government contracts." 10 Do you see that? 11 A. I do. 12 Q. Okay. And which products are you 13 referring to here? 14 A. So election systems broadly. So the 15 other -- the other aspect of that is that my 16 understanding of the ES&S, Dominion, and Hart 17 InterCivic is that they had -- EAC approved, 18 and they had the comprehensive package of them. 19 And many, many -- according to the 20 e-mails I read from Smartmatic's own people, 21 that they -- their -- those -- it said 22 Smartmatic had, like, a piece of this or a</p>	<p style="text-align: right;">Page 272</p> <p>1 Smartmatic's competitors, ES&S, Dominion, 2 and/or Hart InterCivic, have superior products 3 to Smartmatic? 4 A. From the e-mails, again, I could 5 tell that it was from 2018 all the way through 6 2022. 7 Q. And by "the e-mails," you're 8 referring to the Smartmatic internal e-mails, 9 correct? 10 A. Smartmatic internal e-mails, yes. 11 Q. You did not, as part of your 12 analysis, review any documents from ES&S, 13 correct? 14 A. Correct. 15 Q. You did not review any documents 16 from Dominion, correct? 17 A. Not for this case. 18 Q. And you did not review any documents 19 from Hart InterCivic, correct? 20 A. No. No. 21 Q. And you did not speak with anyone at 22 ES&S, correct?</p>

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<p style="text-align: right;">Page 273</p> <p>1 A. Correct.</p> <p>2 Q. You did not speak with anyone at</p> <p>3 Dominion, correct?</p> <p>4 A. Correct.</p> <p>5 Q. You did not speak with anyone at</p> <p>6 Hart InterCivic, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And did you do any analysis as to</p> <p>9 how many contracts Smartmatic's competitors won</p> <p>10 in a particular year?</p> <p>11 A. No, not -- not -- no. I just</p> <p>12 anecdotally heard they were -- they were</p> <p>13 getting awarded ones that -- that -- again,</p> <p>14 from the eternal e-mails, that Smartmatic was</p> <p>15 bidding on, but then it was awarded to -- you</p> <p>16 know, Georgia got awarded to Dominion. ES&S</p> <p>17 got awarded, you know, somewhere else,</p> <p>18 whatever. So just anecdotal.</p> <p>19 Q. By "anecdotally," you're referring</p> <p>20 to your review of the Smartmatic internal</p> <p>21 communications, correct?</p> <p>22 A. Yes, and also my knowledge of where</p>	<p style="text-align: right;">Page 275</p> <p>1 defendants -- one of the other reasons the</p> <p>2 defendants did not harm Smartmatic is that</p> <p>3 Smartmatic does not have a voting machine that</p> <p>4 is EAC certified, correct?</p> <p>5 A. Correct.</p> <p>6 Q. But you're aware, sir, that</p> <p>7 Smartmatic won a contract worth hundreds of</p> <p>8 millions of dollars with L.A. County even</p> <p>9 though it did not have EAC certification,</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 MR. KACHOUROFF: Objection to form.</p> <p>13 BY MR. LETKEWICZ:</p> <p>14 Q. And are you aware how many states</p> <p>15 require EAC certification?</p> <p>16 A. I don't know the exact ones, but I</p> <p>17 think it's -- it's a supermajority. I'm</p> <p>18 thinking 30s, 30 of the 50, something like</p> <p>19 that.</p> <p>20 MR. LETKEWICZ: Can you put Tab 3 in</p> <p>21 the chat.</p> <p>22 THE WITNESS: And then, of course,</p>
<p style="text-align: right;">Page 274</p> <p>1 Dominion operates. I just happen to know that</p> <p>2 they were getting large contracts in other</p> <p>3 markets across the country.</p> <p>4 Q. Did you, for your work in this --</p> <p>5 strike that.</p> <p>6 For your work in this case, did you</p> <p>7 look at any financials for ES&S?</p> <p>8 A. No.</p> <p>9 Q. Did you look at any financials from</p> <p>10 Dominion?</p> <p>11 A. No.</p> <p>12 Q. Did you look at any financials from</p> <p>13 Hart InterCivic?</p> <p>14 A. No.</p> <p>15 Q. Did you -- so then did you do any</p> <p>16 analysis to the total value of contracts that</p> <p>17 any Smartmatic's competitors won for a</p> <p>18 particular year?</p> <p>19 A. No, I have not.</p> <p>20 Q. Now, one of things you talked</p> <p>21 about -- you've talked about a few times today</p> <p>22 is that Smartmatic -- I'm sorry -- the</p>	<p style="text-align: right;">Page 276</p> <p>1 you know, it depends on the type of equipment</p> <p>2 that is certified. If -- if you're talking</p> <p>3 about EMS, then many -- I think all of them</p> <p>4 need to be EAC certified, but if it's -- if</p> <p>5 it's BMDs or -- or peripherals then -- like,</p> <p>6 printers, scanners, not necessarily.</p> <p>7 (Deposition Exhibit 686 was marked</p> <p>8 for identification.)</p> <p>9 THE WITNESS: Okay. What am I</p> <p>10 looking at?</p> <p>11 BY MR. LETKEWICZ:</p> <p>12 Q. All right. And this is 686. This</p> <p>13 will be marked as 686. And so this -- you</p> <p>14 should see it should state: "The Expert</p> <p>15 Rebuttal Report of Christopher James."</p> <p>16 A. All right. Okay. I see it.</p> <p>17 Q. All right. And you've -- you've</p> <p>18 reviewed this report, correct?</p> <p>19 A. Yes, I have.</p> <p>20 Q. Okay. All right. If you can go --</p> <p>21 MR. KACHOUROFF: Before you go --</p> <p>22 before you go -- before you go further, I just</p>

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<p style="text-align: right;">Page 277</p> <p>1 want to state for the record, as I told your 2 colleague yesterday, we're going to be doing a 3 rebuttal to it so...</p> <p>4 MR. LETKEWICZ: Okay. And we 5 reserve all rights to -- you're saving me some 6 time at the end of the deposition. Thank you, 7 Chris.</p> <p>8 We reserve all rights, including 9 striking such rebuttal report as untimely and 10 being able to depose Mr. Bowes about any such 11 rebuttal report.</p> <p>12 MR. KACHOUROFF: You are the ones 13 who didn't give me the -- the information until 14 the day the rebuttal reports are due, so you 15 know, I understood we talked to Tim Frye about 16 this, and I understand you reserve all your 17 rights.</p> <p>18 So you can continue.</p> <p>19 BY MR. LETKEWICZ:</p> <p>20 Q. All right. If you can go to 21 Paragraph 50.</p> <p>22 A. Okay.</p>	<p style="text-align: right;">Page 279</p> <p>1 And -- and, more importantly, 2 these -- what's not listed in there is the most 3 important part. They don't talk about 4 tabulators, EMS. They don't talk about e-poll 5 books. So the three key things that -- that 6 the election state -- the election management 7 bodies want, Smartmatic doesn't even offer.</p> <p>8 You can do project management and -- 9 and throw in screen door repair in there, and 10 you're good. You know, it's all -- it's 11 all not an important part.</p> <p>12 Q. So my question was simply: Do you 13 have any reason to believe that Smartmatic does 14 not offer any of these products or services, 15 and based on the initial part of your answer, 16 the answer to that is no, you're not aware of 17 any of --</p> <p>18 A. I -- I just -- I don't know. I 19 don't know what they're doing or what they're 20 -- you know, they can -- they can say they've 21 got things for sale, but I know that they 22 haven't actually sold stuff. So, I mean, L.A.</p>
<p style="text-align: right;">Page 278</p> <p>1 Q. And in Paragraph 50, do you see that 2 Professor James is describing various products 3 and services Smartmatic offers. He says: "In 4 addition to voting machines and associate 5 software, Smartmatic offers: Project 6 management and oversight; 2, system readiness 7 testing; 3, voter registration and management 8 services; 4, poll worker recruitment, training, 9 and support; 5, election management platforms; 10 and, 6, online voting platforms (also referred 11 to as e-voting or Internet voting)."</p> <p>12 Do you see all that?</p> <p>13 A. I -- I did read that. Yes, I see 14 it.</p> <p>15 Q. Okay. And do you have any reason to 16 believe that Smartmatic does not offer any of 17 these products or services?</p> <p>18 A. I don't know if they offer these, 19 but these are -- these are -- seem like they 20 are trying to sell whatever they can possibly 21 sell it looks like maybe. I'm not sure when -- 22 when -- what date. This is not dated.</p>	<p style="text-align: right;">Page 280</p> <p>1 is the last contract I know of.</p> <p>2 So this -- this is -- this list I -- 3 there's -- there's a low degree of certainty 4 that this is true -- these are true statements.</p> <p>5 Q. Okay. And why do you say there is a 6 low degree of certainty that these are true 7 statements?</p> <p>8 A. Because I don't see it in the 9 numbers. Show me a -- show me a contract that 10 they have gotten for any of the list of items 11 here. Have that got any contracts for 1 12 through 6 in the last -- since L.A.? Have they 13 received any contract, 1, 2, 3, 4 or 5 or 6, 14 since L.A.?</p> <p>15 Q. So --</p> <p>16 A. It seems to me to be totally 17 speculative.</p> <p>18 Q. Well, sir, aren't you speculating 19 that Smartmatic has not sold these?</p> <p>20 A. No. No. I know that Los Angeles is 21 the last contracts they've had.</p> <p>22 Q. Well, sir, you know that they --</p>

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<p style="text-align: right;">Page 281</p> <p>1 they are -- they do business outside the United 2 States, though, right? Correct? 3 A. All right. So we're getting back to 4 the interrogatories. We are talking about USA, 5 right? 6 Q. All right. But you -- you are 7 speculating that Smartmatic USA has not or has 8 not sold any of these products and services 9 listed 1 through 6, correct? 10 MR. KACHOUROFF: Objection. Asked 11 and answered. 12 THE WITNESS: Yeah. Yeah, I have 13 answered. It's like I don't think they've sold 14 it to anybody in the U.S. other than L.A. 15 Q. And that's based on your review of 16 the financial statements; is that correct? 17 A. And e-mails. 18 Q. And e-mails? 19 A. Uh-huh. 20 Q. Are you aware -- 21 A. Wait. BDO writes they had one 22 customer. One customer. That's it. And that</p>	<p style="text-align: right;">Page 283</p> <p>1 Q. Poll worker recruitment training and 2 support, does that require EAC certification? 3 A. No. No. 4 Q. Election management platforms, does 5 that require EAC certification? 6 A. Maybe. Depends on what platforms 7 that this guy is talking about. 8 Q. Online voting platforms, does that 9 require EAC certification? 10 A. I don't know. Maybe. 11 MR. LETKEWICZ: All right. We've 12 been going about an hour and 20 minutes. I 13 want to give the court reporter a break. Why 14 don't we break for eight minutes and come back 15 at quarter till? 16 THE VIDEOGRAPHER: We are going off 17 the record at 3:37 p.m. 18 (A short recess was taken.) 19 THE VIDEOGRAPHER: We are back on 20 the record. 3:46 p.m. 21 BY MR. LETKEWICZ: 22 Q. Okay. Now, Mr. Bowes, it's your</p>
<p style="text-align: right;">Page 282</p> <p>1 was VSAP and maybe related software. 2 Q. Sir, have you reviewed the contract 3 between L.A. County and Smartmatic? 4 A. I -- I did see some aspects of it, 5 but I -- but I haven't dug into it in detail. 6 I know they had, like, an extra add-on piece 7 just, like, in the 2022, maybe 2021, 2022, but 8 I don't -- I wouldn't say I know it in detail. 9 Q. And going back to this list of items 10 in Number 50 do you know if project management 11 and oversight requires EAC certification? 12 A. I don't believe it does. 13 Q. Okay. And do you know if system 14 readiness testing requires EAC certification? 15 A. If it's -- if it's EMS or logic and 16 accuracy, yes, but I don't know what system 17 they're talking about here. Maybe otherwise, 18 no. 19 Q. All right. And voter registration 20 and management services, does that require EAC 21 certification? 22 A. No.</p>	<p style="text-align: right;">Page 284</p> <p>1 opinion that not only did defendants not cause 2 Smartmatic any damages, that Mr. Lindell's 3 statements actually helped Smartmatic, correct? 4 A. I -- I don't know about that. I 5 think that there were all kinds of statements 6 going out by various actors all across the 7 spectrum that were saying -- I think -- I think 8 the bigger impact is -- is when the U.S. 9 government comes out and -- and various parties 10 within inside the U.S. government come out and 11 say it's the safest, most secure election ever. 12 You know, Chris Krebs, various people, so that 13 those certainly -- that certainly helped that 14 business, the election system business. I 15 don't know -- I don't know whether -- 16 Q. Let me -- 17 A. I don't think Lindell's statements 18 had any -- had any impact either way. 19 Q. I'll -- I'll help you by directing a 20 portion of your report here. If you can go to 21 Page 11 and Paragraph 42, and let me know when 22 you're there.</p>

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<p style="text-align: right;">Page 285</p> <p>1 A. 42?</p> <p>2 Q. Yes.</p> <p>3 A. Yes. Yes.</p> <p>4 Q. And you state in the middle of this</p> <p>5 paragraph: "If anything, statements by Lindell</p> <p>6 gave Smartmatic new life."</p> <p>7 Do you see that?</p> <p>8 A. I do see that.</p> <p>9 Q. And do you still stand by that</p> <p>10 sentence?</p> <p>11 A. Yes. It -- it brought attention to</p> <p>12 them. The government -- the U.S. government</p> <p>13 was backing them up basically saying, oh,</p> <p>14 safest, most secure election.</p> <p>15 And it -- frankly, before 2020 they</p> <p>16 were -- they were having -- what I was trying</p> <p>17 to get at in that statement is that you could</p> <p>18 see that the L.A. contract was -- was sort of</p> <p>19 drying up, running down, you know, just stubs</p> <p>20 -- you know, stubs of it coming in.</p> <p>21 This -- this dispute has created a</p> <p>22 new life for Smartmatic. They, you know, got</p>	<p style="text-align: right;">Page 287</p> <p>1 still a true -- still a true statement.</p> <p>2 MR. LETKEWICZ: All right. Can you</p> <p>3 put Tab 5 in the chat. This will be marked as</p> <p>4 Plaintiff's Exhibit 686.</p> <p>5 MS. MOYE-ROWLEY: 87.</p> <p>6 MR. LETKEWICZ: 687. Thank you.</p> <p>7 (Deposition Exhibit 687 was marked</p> <p>8 for identification.)</p> <p>9 THE WITNESS: 87?</p> <p>10 MR. LETKEWICZ: Or 86?</p> <p>11 THE WITNESS: 86. Oh, wait.</p> <p>12 It's --</p> <p>13 BY MR. LETKEWICZ:</p> <p>14 Q. Open 687, Mr. Bowes.</p> <p>15 A. Okay. It just populated. I see it</p> <p>16 now.</p> <p>17 Okay. It's open.</p> <p>18 Q. Okay. And this -- I will represent</p> <p>19 to you this is the first supplemental complaint</p> <p>20 that Smartmatic filed in this case.</p> <p>21 I believe you indicated earlier that</p> <p>22 you had reviewed this as part of your work in</p>
<p style="text-align: right;">Page 286</p> <p>1 them tens of millions of new capital to come</p> <p>2 into Smartmatic because of this litigation.</p> <p>3 They -- they got a settlement from OAN. They</p> <p>4 are trying to shake money out of other</p> <p>5 entities. So this is, I guess, the new life I</p> <p>6 was referring to in that statement, the</p> <p>7 litigation life.</p> <p>8 Q. And if you can go to Page 18 --</p> <p>9 A. Yes.</p> <p>10 Q. -- and Paragraph 82.</p> <p>11 A. Okay.</p> <p>12 Q. And in the last sentence, you write:</p> <p>13 "Ironically, had media and individuals not</p> <p>14 mention Smartmatic, the company would not be in</p> <p>15 business today and would have folded shortly</p> <p>16 after the 2020 election."</p> <p>17 Do you see that?</p> <p>18 A. Yes. That's what I believe, yes.</p> <p>19 Q. Yeah. And are you including Mr.</p> <p>20 Lindell in that particular statement?</p> <p>21 A. Well, yes. He is the target of a</p> <p>22 shakedown, so yes. I think -- I think this is</p>	<p style="text-align: right;">Page 288</p> <p>1 this case, correct?</p> <p>2 A. I reviewed parts of it, not all of</p> <p>3 it.</p> <p>4 Q. Okay. All right. Well, I'm only</p> <p>5 going to ask you about a couple small parts of</p> <p>6 this.</p> <p>7 If you could go to Page 63 of the</p> <p>8 PDF. It's Page 60 in the document, and let me</p> <p>9 know when you're there. You should see a</p> <p>10 Paragraph 158.</p> <p>11 A. It's Page 60 in the document?</p> <p>12 Q. It will be 63 of the PDF.</p> <p>13 A. Okay. It's --</p> <p>14 Q. If you look at the page number on</p> <p>15 the bottom center, it says 60.</p> <p>16 A. Okay. I have that.</p> <p>17 Q. And in 158 it says: "Below are some</p> <p>18 of the statements that Lindell made and/or</p> <p>19 broadcast to create the impression that</p> <p>20 Smartmatic had stolen the 2020 U.S. election</p> <p>21 for Joe Biden and Kamala Harris."</p> <p>22 Do you see that?</p>

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<p style="text-align: right;">Page 289</p> <p>1 A. So -- okay. It is part of 158 that 2 starts above? Okay. 3 Q. Yeah. Do you see that -- that 4 sentence? And then it's -- on that particular 5 page, it's A through F. 6 A. A through F. So A through F are not 7 -- oh, on -- is it 60? I'm sorry. 8 Q. Page -- Page 60. It's Page 63 of 9 the PDF. 10 A. Okay. Right. I see those. 11 Q. And in Subsection B, it says -- it 12 alleges Mr. Lindell said: "I have" -- "I have 13 100 percent, not 99 percent, 100 percent 14 evidence" of -- "that of everything they did, 15 Smartmatic, ES&S, all of those machines did and 16 stole our country and stole our election." 17 Do you see that? 18 A. I see that. 19 Q. So how did this particular statement 20 not only not harm Smartmatic but give it new 21 life? 22 MR. KACHOUROFF: Objection. This</p>	<p style="text-align: right;">Page 291</p> <p>1 one, did not financially harm Smartmatic and 2 gave Smartmatic new life, correct? 3 A. So you've got to get into the harm. 4 I think that it's relative to -- to what the 5 condition of Smartmatic was at the time. And 6 they had -- this USA was very tenuous, had no 7 capital. They were -- you know, had a going 8 concern opinion. So -- 9 Q. So a statement -- go ahead. I'm 10 sorry. 11 A. Go ahead. 12 Q. So a statement that Smartmatic stole 13 the 2020 U.S. presidential election did not 14 cause any financial harm to Smartmatic. That's 15 what your testimony is? 16 MR. KACHOUROFF: Objection. That 17 mischaracterizes the paragraph. The whole 18 paragraph doesn't say just Smartmatic. 19 BY MR. LETKEWICZ: 20 Q. You can answer the question. 21 A. So this statement listed in B, I -- 22 I don't believe that it harmed the financial</p>
<p style="text-align: right;">Page 290</p> <p>1 goes beyond his opinion. 2 But you can answer it again. 3 THE WITNESS: Yeah. I think I 4 answered it before. I'll just summarize it 5 quickly. 6 The -- this dispute has given 7 Smartmatic a life that they would not have 8 otherwise had. They -- they appeared to me to 9 be failing in their contract bidding and that 10 now they are in a new life of litigation. 11 BY MR. LETKEWICZ: 12 Q. So do you believe -- 13 A. That's what I meant. 14 Q. So do you believe then that being 15 accused of stealing a U.S. presidential 16 election actually helps a company? Is that 17 what you're saying? 18 MR. KACHOUROFF: Objection to form. 19 THE WITNESS: I'm not saying that. 20 BY MR. LETKEWICZ: 21 Q. Okay. But that -- but you are 22 saying that this -- statements, such as that</p>	<p style="text-align: right;">Page 292</p> <p>1 condition of Smartmatic. 2 Q. And why is that? 3 A. So it's -- it's not -- the main 4 thing is that Smartmatic had already harmed 5 themselves, and was that -- that they were at 6 the losing end of incumbency bias, as Chris 7 James says. He says it's incumbency bias. 8 They -- they were on the losing end of that 9 because the -- the two other -- two or three 10 other competitors were the incumbents, and 11 Smartmatic was trying to wedge themselves in 12 and unsuccessfully. Could not wedge themselves 13 into getting any contracts other than L.A. 14 So they -- they -- they just didn't 15 have the resources. Their -- their business 16 practices showed poor integrity. They had 17 political risk. They had -- just -- their 18 operations just were inferior. So they had 19 already harmed themselves. So you can't 20 really -- can't really harm them any further 21 when they have already, you know, been in a -- 22 in a -- it was a sinking ship to begin with</p>

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<p style="text-align: right;">Page 293</p> <p>1 so --</p> <p>2 Q. So it's your -- your opinion then,</p> <p>3 if I am understanding that answer, that as of</p> <p>4 -- as of the -- January 1, 2021 Smartmatic was</p> <p>5 worth zero. Is that essentially what you're</p> <p>6 saying?</p> <p>7 A. So the worth of the company would --</p> <p>8 I -- I look at it as the simplest measure is</p> <p>9 the equity value in the company, and it was</p> <p>10 near zero. I think -- I think in 2021 they had</p> <p>11 negative equity, if I am not mistaken, or very,</p> <p>12 very little, if any, capital. So that's --</p> <p>13 that's a pure accounting measure of value.</p> <p>14 They essentially had no value.</p> <p>15 Q. And if you could go to Page 74 of</p> <p>16 the PDF. It's Page 71 of the complaint.</p> <p>17 A. Oh, okay. 71. I'm there.</p> <p>18 Q. Yep. And at Paragraph 178, it says:</p> <p>19 "Below are some of the statements Mr. Lindell</p> <p>20 made and published to create the false</p> <p>21 narrative that Smartmatic was engaged in a</p> <p>22 widespread criminal conspiracy."</p>	<p style="text-align: right;">Page 295</p> <p>1 Q. Let's put that document away.</p> <p>2 All right. Can we go -- let's go to</p> <p>3 Mr. Gorowsky's September 22nd report, and if</p> <p>4 you could go to Page 12. Let me know when you</p> <p>5 are there.</p> <p>6 A. Okay. Hang on.</p> <p>7 Okay. Page 12.</p> <p>8 Q. And the title of Subsection A there</p> <p>9 is: "Smartmatic's Election Business Was</p> <p>10 Reporting Declining Revenues, Operating in Net</p> <p>11 Losses and Negative Operating Cash Flows Prior</p> <p>12 to January 2021," and then there is Footnote</p> <p>13 10.</p> <p>14 Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. And pages then 12 through 18</p> <p>17 describes Smartmatic's financial performance</p> <p>18 from 2012 to 2021, correct?</p> <p>19 A. Right.</p> <p>20 Q. And going to Footnote 10, it says:</p> <p>21 "Much of the information contained in this</p> <p>22 section was obtained but independently verified</p>
<p style="text-align: right;">Page 294</p> <p>1 Do you see that?</p> <p>2 A. I see those words written, yes.</p> <p>3 Q. And it has subsections A through F,</p> <p>4 but I can direct your attention to Subsection E</p> <p>5 on the next page.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And it alleges Mr. Lindell said:</p> <p>9 "Not only that they're -- you know, what they</p> <p>10 did to our country, them and Smartmatic --</p> <p>11 let's not forget Smartmatic. They're like the</p> <p>12 mothership of this and for not only being</p> <p>13 involved in the biggest crime against our</p> <p>14 country, probably in history."</p> <p>15 Do you see that statement?</p> <p>16 A. I do see that statement.</p> <p>17 Q. Okay. And it's your opinion that</p> <p>18 being accused of being involved in the biggest</p> <p>19 crime against the country probably in history</p> <p>20 had no negative financial impact on Smartmatic?</p> <p>21 That's your opinion, correct?</p> <p>22 A. That's my opinion, yes.</p>	<p style="text-align: right;">Page 296</p> <p>1 from the updated expert report of Daniel R.</p> <p>2 Fischel dated April 17, 2023 in the Smartmatic</p> <p>3 USA Corp., et al., v. Fox Corp., et al., case</p> <p>4 in the New York -- Supreme Court of the State</p> <p>5 of New York, County of New York."</p> <p>6 Do you see that?</p> <p>7 A. I do see that, yes.</p> <p>8 Q. Prior to adopting Mr. Gorowsky's</p> <p>9 opinions in toto, did you speak with Mr.</p> <p>10 Fischel?</p> <p>11 A. I did not.</p> <p>12 Q. And prior to your deposition today,</p> <p>13 did you speak with Mr. Fischel?</p> <p>14 A. No.</p> <p>15 Q. What work did you do to assess the</p> <p>16 accuracy and reliability of the information in</p> <p>17 the updated expert report of Daniel R. Fischel?</p> <p>18 A. I -- I relied on Gorowsky to -- to</p> <p>19 do that. I -- I did -- I did read parts of</p> <p>20 that and -- but -- but relied on Gorowsky.</p> <p>21 Q. All right. If you can go to Page</p> <p>22 18, and right above Subsection B, it says:</p>

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<p style="text-align: right;">Page 297</p> <p>1 "Smartmatic's financial performance leading up 2 to the alleged disinformation campaign shows a 3 business in decline facing declining revenues, 4 consistent losses, and negative cash flows from 5 operations." 6 Do you see that? 7 A. Yes. 8 Q. Okay. And is it your opinion that a 9 company that is losing money can never suffer 10 any damages? 11 A. That's not my opinion. You have to 12 look at all the facts and circumstances of the 13 situation to -- to drill into exactly what's 14 going on. 15 Q. And, sir, you're aware that simply 16 because a company is losing money in the past 17 does not mean it is going to continue to lose 18 money in the future, correct? 19 A. It depends on the company. 20 Q. Right. So there are certain 21 companies -- you would agree there are certain 22 companies that simply because they lost money</p>	<p style="text-align: right;">Page 299</p> <p>1 Q. And the first factor that he lists 2 is Smartmatic's lawsuits against Fox, Newsmax, 3 and OAN, correct? 4 A. Yes. 5 Q. And you're aware -- I understand, 6 sir, that you disagree with Smartmatic -- what 7 Smartmatic is alleging as its damages. 8 But you understand, sir, that 9 Smartmatic is alleging damages in this case, 10 correct? 11 A. Yes. 12 Q. And have you done any analysis 13 trying to apportion those claimed damages 14 amongst Fox, Newsmax, and/or OAN? 15 A. Analysis? 16 Q. Yes. 17 A. I don't have discovery to be able to 18 do that, and I -- I look at this as sort of 19 like a -- it's a subrogation issue where -- 20 Q. And -- 21 A. What's that? 22 Q. All right. So let's go to B here.</p>
<p style="text-align: right;">Page 298</p> <p>1 previously, that they would not necessarily 2 continue to lose money in the future? 3 A. That there -- there are those 4 situations, yes. 5 Q. And, for example, Amazon would be an 6 example of that, correct? 7 A. I don't know. 8 Q. All right. If you can go to Page 20 9 of Mr. Gorowsky's report. And in the first 10 full paragraph, it says: "As of the date of 11 this report, there are numerous known factors 12 other than defendants' alleged defamation that 13 may contribute in whole or in part to any 14 alleged damages." 15 Do you see that? 16 A. I see it, yes. 17 Q. And then it lists -- let's see here. 18 It goes over multiple pages, but A through H on 19 different factors that Mr. Gorowsky said may 20 contribute in whole or in part to any alleged 21 damages, correct? 22 A. Yes.</p>	<p style="text-align: right;">Page 300</p> <p>1 And it references: "In addition to 2 those identified in these three specific 3 lawsuits, other individuals who made the same 4 or similar statements as Mr. Lindell that may 5 have contributed in whole or in part to 6 Smartmatic's alleged damages include, but is 7 not limited to, Donald J. Trump, Michael Flynn, 8 Steven Bannon, the 2020 Trump campaign, Tucker 9 Carlson, and Patrick Byrne." 10 Do you see all that? 11 A. I do. 12 Q. And similar to Fox, Newsmax, and 13 OAN, you have not done any analysis to trying 14 to apportion Smartmatic's claimed damages to 15 any of these individuals listed in Subsection 16 B, correct? 17 A. So that -- that would -- I just have 18 to reiterate that the last question you're 19 asking about A and the last question about B 20 forget -- they totally ignore the elephant in 21 the room, and that is that Smartmatic had its 22 own major financial issues before all this</p>

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<p style="text-align: right;">Page 301</p> <p>1 happened. So, again, I -- I challenge the</p> <p>2 assertion that there were damages at all by</p> <p>3 these people so...</p> <p>4 Q. Okay. So, sir -- so, sir, I</p> <p>5 understand you understand there were not any</p> <p>6 damages.</p> <p>7 But my question is simply -- I am</p> <p>8 focused on the work that you did in this case.</p> <p>9 A. Sure. Sure.</p> <p>10 Q. You did not do any type of</p> <p>11 apportionment of Smartmatic's claimed damages</p> <p>12 to any of the -- any of the individuals listed</p> <p>13 in Subsection B here on Page 20, correct?</p> <p>14 MR. KACHOUROFF: Objection. Asked</p> <p>15 and answered. He told you he can't do it.</p> <p>16 THE WITNESS: So let me just -- I'll</p> <p>17 give you a mathematical. So if I were to apply</p> <p>18 some apportionment to zero losses, you know,</p> <p>19 rules of multiplication of zeros is it still</p> <p>20 results in zero. So if somebody had 10 percent</p> <p>21 of the -- of the attribution of a loss of</p> <p>22 damages, then it's still zero. So it's an</p>	<p style="text-align: right;">Page 303</p> <p>1 listed is -- that may contribute in whole or in</p> <p>2 part to any alleged damages is -- cybersecurity</p> <p>3 experts who have raised concerns about the</p> <p>4 vulnerabilities of electronic voting machines</p> <p>5 may have also contributed to Smartmatic's</p> <p>6 alleged damages. Vocal critics of the</p> <p>7 electronic voting machine industry include</p> <p>8 Professor Alex Halderman, Professor Andrew</p> <p>9 Appel, and Henri Hursti.</p> <p>10 Do you see all that?</p> <p>11 A. I do.</p> <p>12 Q. Are you aware that Professor</p> <p>13 Halderman, Professor Appel, and Mr. Hursti all</p> <p>14 signed a letter stating that there was no</p> <p>15 credible evidence to support the conclusion</p> <p>16 that the 2020 election outcome at any state had</p> <p>17 been altered through technical compromise?</p> <p>18 A. So I'm not aware of that. In fact,</p> <p>19 the opposite is I have -- know that those three</p> <p>20 individuals have testified in federal court</p> <p>21 that there are these cybersecurity</p> <p>22 vulnerabilities.</p>
<p style="text-align: right;">Page 302</p> <p>1 academic exercise.</p> <p>2 BY MR. LETKEWICZ:</p> <p>3 Q. Well, sir, you indicated that you</p> <p>4 adopted Mr. Gorowsky's report in toto, and he</p> <p>5 is saying here are other factors that may</p> <p>6 contribute in whole or in part to any alleged</p> <p>7 damages.</p> <p>8 And I am just focused on -- if you</p> <p>9 didn't do any analysis, that's fine, just say</p> <p>10 you didn't do any analysis. My question is:</p> <p>11 Did you do any analysis as to any kind of</p> <p>12 apportionment?</p> <p>13 A. If you -- yes. The simple analysis</p> <p>14 is that I don't believe damages occurred that</p> <p>15 -- so, therefore, the apportionment study was</p> <p>16 very quick. When you have zero damages and you</p> <p>17 have other alleged statements, there is no --</p> <p>18 there is no apportionment of losses to other</p> <p>19 people. No -- no apportionment of damages to</p> <p>20 other people. My assertion still is that --</p> <p>21 that Smartmatic had self-inflicted damages.</p> <p>22 Q. And in -- so in C a factor that was</p>	<p style="text-align: right;">Page 304</p> <p>1 Q. Well, my question was not whether</p> <p>2 there are cybersecurity vulnerabilities but</p> <p>3 that they signed a letter that stated that</p> <p>4 there was no credible evidence to support the</p> <p>5 conclusion that the 2020 election outcome in</p> <p>6 any state had been altered through technical</p> <p>7 compromise.</p> <p>8 MR. KACHOUROFF: Object to form and</p> <p>9 objection. Hearsay.</p> <p>10 THE WITNESS: Yes. That's -- I</p> <p>11 think they have written contrary statements and</p> <p>12 they have testified contrary to what you just</p> <p>13 described, every one of them. Harri -- Harri</p> <p>14 Hursti, in particular. Alex Halderman in</p> <p>15 particular.</p> <p>16 MR. LETKEWICZ: Can you please put</p> <p>17 Tab 25 in the chat, please. And this will be</p> <p>18 marked as 688. Thank you.</p> <p>19 (Deposition Exhibit 688 was marked</p> <p>20 for identification.)</p> <p>21 BY MR. LETKEWICZ:</p> <p>22 Q. All right. And exhibit --</p>

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<p style="text-align: right;">Page 305</p> <p>1 Plaintiff's Exhibit 688 is Exhibit 106 to</p> <p>2 Smartmatic's first amended complaint, which we</p> <p>3 looked at briefly a short time ago.</p> <p>4 And if you go to the second page,</p> <p>5 there is a headline: "Scientists Say No</p> <p>6 Credible Evidence of Computer Fraud in the 2020</p> <p>7 Election Outcome, But Policymakers Must Work</p> <p>8 With Experts to Improve Confidence."</p> <p>9 Do you see that headline?</p> <p>10 A. Yeah. What is this? What is the</p> <p>11 source of this?</p> <p>12 Q. It's a letter that was put together</p> <p>13 by various individuals that signed that we're</p> <p>14 getting to in a moment. So --</p> <p>15 A. Words on paper.</p> <p>16 Q. Okay.</p> <p>17 MR. KACHOUROFF: I'm objecting to</p> <p>18 this exhibit as hearsay.</p> <p>19 MR. LETKEWICZ: Okay.</p> <p>20 BY MR. LETKEWICZ:</p> <p>21 Q. And it says, if you look in the --</p> <p>22 let's see. One, two, three, four -- Paragraph</p>	<p style="text-align: right;">Page 307</p> <p>1 And then -- do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And Number 2 is listed Andrew W.</p> <p>4 Appel, Professor of computer science, Princeton</p> <p>5 University, correct?</p> <p>6 A. See that.</p> <p>7 Q. And then it says at Number 22, J.</p> <p>8 Alex Halderman, professor of computer science</p> <p>9 and engineering, University of Michigan,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And if you look at Number 24, it</p> <p>13 says Harri Hursti, cofounder of Nordic</p> <p>14 Innovation Labs and Election Integrity</p> <p>15 Foundation, correct?</p> <p>16 A. I see that.</p> <p>17 Q. All right. We can put that away.</p> <p>18 A. That -- that -- that -- I have</p> <p>19 questions about that, the validity --</p> <p>20 MR. KACHOUROFF: There is no</p> <p>21 question on the table, Robert.</p> <p>22 THE WITNESS: Okay.</p>
<p style="text-align: right;">Page 306</p> <p>1 5, it says: "To our collective knowledge, no</p> <p>2 credible evidence has been put forth that</p> <p>3 supports a conclusion that the 2020 election</p> <p>4 outcome in any state has been altered through</p> <p>5 technical compromise."</p> <p>6 Do you see that?</p> <p>7 A. I -- I lost you on that. So which</p> <p>8 paragraph?</p> <p>9 Q. Do you see there's -- it's three</p> <p>10 paragraphs from the bottom. We are -- it</p> <p>11 starts with: "We are aware."</p> <p>12 A. We are aware. Okay.</p> <p>13 Q. Yeah. And in the last sentence, it</p> <p>14 says: "To our collective knowledge, no</p> <p>15 credible evidence has been put forth that</p> <p>16 supports a conclusion that the 2020 election</p> <p>17 outcome in any state has been altered through</p> <p>18 technical compromise."</p> <p>19 Do you see that statement?</p> <p>20 A. I see that statement.</p> <p>21 Q. Okay. And then on the next page, it</p> <p>22 says: "Signed."</p>	<p style="text-align: right;">Page 308</p> <p>1 BY MR. LETKEWICZ:</p> <p>2 Q. All right. Let's go back to the</p> <p>3 September 22, 2023, Gorowsky report, and going</p> <p>4 back to the different factors that Mr. Gorowsky</p> <p>5 is listing. And on Page 21, he states:</p> <p>6 "Competition and successes from other companies</p> <p>7 also competing in the voting machine market in</p> <p>8 the U.S. and worldwide."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Are you aware of any potential</p> <p>12 customer that formed a negative opinion about</p> <p>13 Smartmatic because of the success of</p> <p>14 Smartmatic's competitors?</p> <p>15 A. No.</p> <p>16 Q. In E it references: "Smartmatic's</p> <p>17 other known reputational concerns outside the</p> <p>18 United States, including issues with contracts</p> <p>19 in the Philippines and Venezuela."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. So Smartmatic's reputation concerns</p>

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<p style="text-align: right;">Page 309</p> <p>1 outside of the United States may have affected</p> <p>2 Smartmatic's business in the U.S., correct?</p> <p>3 A. They may have.</p> <p>4 Q. And you would agree that the inverse</p> <p>5 would be true as well, that reputation concerns</p> <p>6 in the United States could affect Smartmatic's</p> <p>7 business outside the United States, correct?</p> <p>8 MR. KACHOUROFF: Objection. You</p> <p>9 guys have already jettisoned Attachment A, the</p> <p>10 "international damages," so I'm not sure what</p> <p>11 the basis is for the question.</p> <p>12 MR. LETKEWICZ: All right. Well,</p> <p>13 unless you're instructing him not to answer,</p> <p>14 I'll need -- I'll need an answer to the</p> <p>15 question.</p> <p>16 MR. KACHOUROFF: Okay. Don't -- we</p> <p>17 can't answer the question, and so I will</p> <p>18 instruct him not to answer that question.</p> <p>19 MR. LETKEWICZ: Are -- are you</p> <p>20 asserting a privilege on that? Because,</p> <p>21 otherwise -- if you are not asserting a</p> <p>22 privilege, I don't see a basis for you to</p>	<p style="text-align: right;">Page 311</p> <p>1 I'll make another decision.</p> <p>2 BY MR. LETKEWICZ:</p> <p>3 Q. Have you undertaken -- I'm sorry.</p> <p>4 You would agree that the inverse is</p> <p>5 true as well, that reputation concerns in the</p> <p>6 United States could affect Smartmatic's</p> <p>7 business outside of the United States, correct?</p> <p>8 MR. KACHOUROFF: Object to form.</p> <p>9 THE WITNESS: I -- it's -- it's not</p> <p>10 in the scope of what I looked at, so it's --</p> <p>11 it's a hypothetical I can't answer.</p> <p>12 BY MR. LETKEWICZ:</p> <p>13 Q. So you don't know one way or the</p> <p>14 other whether or not --</p> <p>15 A. Well, I -- so I know the Philippines</p> <p>16 happened, and I know that Venezuela happened,</p> <p>17 but I don't know if -- I don't think there was</p> <p>18 an inverse that actually happened for me to</p> <p>19 evaluate.</p> <p>20 Q. So are you saying that Smartmatic</p> <p>21 had no reputation concerns in the United</p> <p>22 States?</p>
<p style="text-align: right;">Page 310</p> <p>1 instruct him not to answer.</p> <p>2 MR. KACHOUROFF: Yes. I am</p> <p>3 asserting the fact that you guys jettisoned</p> <p>4 your international damages, so what's the -- A,</p> <p>5 there is no relevance to asking the question</p> <p>6 now at this point, and B, you're asking him to</p> <p>7 speculate on losses outside the United States</p> <p>8 that you have now jettisoned that you say don't</p> <p>9 exist. I mean, come on.</p> <p>10 MR. LETKEWICZ: Okay. So your view</p> <p>11 of relevance is not a basis to -- I mean,</p> <p>12 you -- look, you can instruct him not to</p> <p>13 answer. It's not a proper basis, and you know,</p> <p>14 we'll keep the question open and the deposition</p> <p>15 open, and if we have to bring him back to have</p> <p>16 him answer that question, that's fine. But if</p> <p>17 you're going to instruct him, that's fine. It</p> <p>18 is not a proper instruction, but if that's what</p> <p>19 you want to do, that's certainly your choice</p> <p>20 right now.</p> <p>21 MR. KACHOUROFF: State your -- state</p> <p>22 your question succinctly again, please, and</p>	<p style="text-align: right;">Page 312</p> <p>1 MR. KACHOUROFF: Objection. That</p> <p>2 misstates his answer. You're talking about</p> <p>3 international, not the United States.</p> <p>4 THE WITNESS: Right. Between --</p> <p>5 BY MR. LETKEWICZ:</p> <p>6 Q. Well, I'm -- so I'm asking you would</p> <p>7 reputation concerns about Smartmatic in the</p> <p>8 United States affect Smartmatic's business</p> <p>9 outside the United States?</p> <p>10 A. I -- I don't know because I don't</p> <p>11 know the circumstances but I do know that there</p> <p>12 were troubles that Smartmatic was having in the</p> <p>13 Philippines and Venezuela that you know the</p> <p>14 facts, we have seen the facts, and it's --</p> <p>15 it's -- the facts are there to draw a</p> <p>16 reasonable conclusion, inference that that</p> <p>17 could have had an impact on -- on the</p> <p>18 Smartmatic USA business. I don't have an -- I</p> <p>19 don't have an inverse to compare.</p> <p>20 Q. Are you aware of any contracts</p> <p>21 Smartmatic lost because of Smartmatic's</p> <p>22 reputational concerns outside the United</p>

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<p style="text-align: right;">Page 313</p> <p>1 States?</p> <p>2 A. I am not -- I am not sure.</p> <p>3 Q. All right. In F it states:</p> <p>4 "Reports of the data security breach involving</p> <p>5 Smartmatic and the Philippines resulting in</p> <p>6 public officials referring to the company as</p> <p>7 'Smartmagic' may be a factor."</p> <p>8 Do you see that?</p> <p>9 A. I see that.</p> <p>10 Q. Do you know what the nature of the</p> <p>11 data breach issue that's being referenced here</p> <p>12 in F?</p> <p>13 A. Just -- just from the reports. I</p> <p>14 don't know in detail.</p> <p>15 Q. So just what's stated here in F is</p> <p>16 what you know?</p> <p>17 A. Essentially.</p> <p>18 Q. So would you know how -- so you</p> <p>19 wouldn't know then how the data breach issue</p> <p>20 was resolved then, correct?</p> <p>21 A. How it was resolved? No. I know</p> <p>22 how the contract got resolved, and it was</p>	<p style="text-align: right;">Page 315</p> <p>1 not renew Smartmatic's contract or use</p> <p>2 Smartmatic for future elections?</p> <p>3 A. The answer would be no in that case,</p> <p>4 but I don't know if they came back and did</p> <p>5 something else. But no is what my assumption</p> <p>6 is based on this -- what I read.</p> <p>7 MR. LETKEWICZ: Okay. Can you put</p> <p>8 Tab 26 in the chat, and this will be marked as</p> <p>9 Plaintiff's Exhibit 689.</p> <p>10 (Deposition Exhibit 689 was marked</p> <p>11 for identification.)</p> <p>12 THE WITNESS: Okay.</p> <p>13 BY MR. LETKEWICZ:</p> <p>14 Q. Okay. And the first page is -- it's</p> <p>15 from Smartmatic's website, as you can see in</p> <p>16 the bottom left-hand corner. It has the</p> <p>17 headline: "Filipinos use election technology</p> <p>18 to cast 1.6 billion votes for 18,000</p> <p>19 positions."</p> <p>20 Do you see that headline?</p> <p>21 A. Yeah. What -- what's this? Okay.</p> <p>22 I see what's on this piece -- piece of paper.</p>
<p style="text-align: right;">Page 314</p> <p>1 terminated -- or it just seemed like it</p> <p>2 truncated any business with Smartmatic.</p> <p>3 Q. And are you referencing then what is</p> <p>4 in Footnote 51 where it says: "In the 2016</p> <p>5 Philippines elections, questions were raised</p> <p>6 about Smartmatic making changes to the machines</p> <p>7 shortly before the election. Ultimately, the</p> <p>8 Philippines Department of Justice indicted</p> <p>9 several Smartmatic personnel for tampering with</p> <p>10 the election server. The Philippines did not"</p> <p>11 review -- "renew Smartmatic's contract or use</p> <p>12 Smartmatic for future elections."</p> <p>13 A. That's what --</p> <p>14 Q. Is that what you're referencing?</p> <p>15 A. Yes, that's what I am referring to.</p> <p>16 Q. Isn't it, in fact, true that</p> <p>17 Smartmatic did business in the Philippines</p> <p>18 after 2016, such as the 2022 election in the</p> <p>19 Philippines?</p> <p>20 A. I don't know.</p> <p>21 Q. Wouldn't the answer be no, based on</p> <p>22 just what you state here, the Philippines did</p>	<p style="text-align: right;">Page 316</p> <p>1 Q. Yep. And then -- and on the next</p> <p>2 page, it says: "Philippines, Manila, May 10,</p> <p>3 2022. An estimated 53 million Filipino voters</p> <p>4 flocked precincts across the country to cast</p> <p>5 1.6 billion votes and elect candidates to</p> <p>6 18,000 political positions in a landmark</p> <p>7 election. This was the fifth consecutive</p> <p>8 automated vote since the Philippine Commission</p> <p>9 on Elections (Comelec) began using Smartmatic</p> <p>10 technology in 2010."</p> <p>11 Do you see all that?</p> <p>12 A. I see that.</p> <p>13 Q. All right. Let's go back to the</p> <p>14 Gorowsky report, and I'm going to go to</p> <p>15 Subsection C on Page 23. Let me know when</p> <p>16 you're there.</p> <p>17 A. I am there.</p> <p>18 Q. Okay. And the title of this</p> <p>19 subsection is: "My Pillow has been negatively</p> <p>20 impacted financially as a result of Mr.</p> <p>21 Lindell's statements regarding the 2020</p> <p>22 election."</p>

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<p style="text-align: right;">Page 317</p> <p>1 Do you see that?</p> <p>2 A. I do see that.</p> <p>3 Q. Do you know if Mr. Gorowsky showed</p> <p>4 Mr. Lindell or anyone at My Pillow a draft of</p> <p>5 this particular Section C before it was</p> <p>6 provided to Smartmatic on September 22, 2023?</p> <p>7 A. I do not know.</p> <p>8 Q. Do you know if Mr. Gorowsky spoke</p> <p>9 with Mr. Lindell, whether his statements</p> <p>10 negatively impacted My Pillow?</p> <p>11 A. Whose statements?</p> <p>12 Q. Mr. Lindell's statements.</p> <p>13 MR. KACHOUROFF: Objection to form.</p> <p>14 Can you reask the question. It's a little</p> <p>15 confusing.</p> <p>16 MR. LETKEWICZ: Sure. Absolutely.</p> <p>17 BY MR. LETKEWICZ:</p> <p>18 Q. Are you aware if Mr. Gorowsky had a</p> <p>19 conversation with Mr. Lindell regarding whether</p> <p>20 his statements regarding the 2020 election</p> <p>21 negatively impacted My Pillow financially?</p> <p>22 A. I'm not aware.</p>	<p style="text-align: right;">Page 319</p> <p>1 Q. I'm going to switch gears here for a</p> <p>2 moment. In connection -- now, you indicated --</p> <p>3 you indicated earlier that you were a field</p> <p>4 director for the 2016 Trump campaign. Were you</p> <p>5 also a delegate for the Republican National</p> <p>6 Convention?</p> <p>7 A. Yes, I was.</p> <p>8 Q. And you cast a vote for Donald</p> <p>9 Trump's Republican nomination, correct?</p> <p>10 A. I did.</p> <p>11 Q. And do you currently have any</p> <p>12 position or role in Donald Trump's current 2024</p> <p>13 campaign for president?</p> <p>14 A. No.</p> <p>15 Q. You're aware that President Trump</p> <p>16 made a number of different claims of election</p> <p>17 fraud in connection with the 2020 election,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. Did you have any role in</p> <p>21 investigating and -- or advocating such claims</p> <p>22 on behalf of President Trump or his campaign?</p>
<p style="text-align: right;">Page 318</p> <p>1 Q. And have you had any conversations</p> <p>2 with Mr. Lindell regarding whether his</p> <p>3 statements regarding the 2020 election</p> <p>4 negatively impacted My Pillow financially?</p> <p>5 A. No.</p> <p>6 Q. Beyond reviewing the text that is</p> <p>7 set forth in this Subsection C, did you do any</p> <p>8 work to assess the accuracy or the reliability</p> <p>9 of the information as set forth in this Section</p> <p>10 C?</p> <p>11 A. I did.</p> <p>12 Q. What did you do?</p> <p>13 A. I -- I compared this section to</p> <p>14 the -- to the My Pillow financial statements.</p> <p>15 Q. And did you review the exhibits to</p> <p>16 Mr. Gorowsky's report and, in particular,</p> <p>17 Exhibit 5 and Exhibit 5A to his report?</p> <p>18 A. Yes, I did.</p> <p>19 Q. Okay. And was any of his</p> <p>20 information in Exhibit 5 or Exhibit 5A</p> <p>21 inaccurate from your review?</p> <p>22 A. It was not inaccurate.</p>	<p style="text-align: right;">Page 320</p> <p>1 A. Yes.</p> <p>2 Q. And what was your role?</p> <p>3 A. I was a contributory writer to the</p> <p>4 135-page election fraud report.</p> <p>5 Q. Was that the report we were</p> <p>6 discussing earlier in Wisconsin, or is that</p> <p>7 something different?</p> <p>8 A. Something different. It was a</p> <p>9 national report of a variety of election fraud</p> <p>10 that occurred around the country.</p> <p>11 Q. You said you were a contributor.</p> <p>12 What was your contribution?</p> <p>13 A. Let's see. In general, it was</p> <p>14 dealing with the aspects of -- of Georgia</p> <p>15 election fraud, and in particular, it -- I</p> <p>16 focused on some of the aspects of -- about</p> <p>17 illegal ballot trafficking.</p> <p>18 Q. And you are aware too that President</p> <p>19 Trump was indicted down in Georgia on RICO</p> <p>20 charges, correct?</p> <p>21 A. Yes.</p> <p>22 MR. KACHOUROFF: Objection to form.</p>

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1 BY MR. LETKEWICZ:

2 Q. And you traveled down to Georgia

3 when President Trump went to Fulton County to

4 be booked, correct?

5 A. I did.

6 Q. And that was to support President

7 Trump, correct?

8 A. No, not necessarily.

9 Q. I think you had mentioned this

10 earlier, but you -- I think as part of your

11 work on this Georgia RICO task force, you

12 compiled evidence that you believe rebutted the

13 charges in Georgia, correct?

14 A. Yes.

15 MR. KACHOUROFF: Objection. What

16 does this have to do with his opinion? We are

17 going way outside the scope of his opinion at

18 this point.

19 THE WITNESS: Right.

20 BY MR. LETKEWICZ:

21 Q. Did you do so on behalf of President

22 Trump or his campaign?

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1 A. No.

2 Q. Do you believe that Joe Biden was

3 legitimately elected president of the United

4 States?

5 A. No.

6 Q. Do you believe that the 2020

7 election was stolen from President Trump?

8 A. Yes.

9 Q. And you believe that in Georgia the

10 2020 election results were rigged to steal it

11 for Joe Biden, correct?

12 MR. KACHOUROFF: Objection. Form.

13 THE WITNESS: What do you mean by

14 "rigged to steal it"?

15 BY MR. LETKEWICZ:

16 Q. Sure. I'll help you out here.

17 MR. LETKEWICZ: Can you put Tab 6 in

18 the chat. Do you have a --

19 MR. KACHOUROFF: We're not -- we're

20 not answering -- we're not answering these

21 questions. These have nothing to do with the

22 financial opinion and analysis that he is

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1 doing.

2 So I'm just going to instruct you

3 not to answer any other questions about going

4 down to Georgia --

5 MR. LETKEWICZ: So --

6 MR. KACHOUROFF: -- what your

7 personal opinions are.

8 MR. LETKEWICZ: So --

9 MR. KACHOUROFF: This has nothing to

10 do with your report.

11 MR. LETKEWICZ: So, Chris, it all

12 goes to bias. It's relevant to bias.

13 Now, again, you are certainly

14 welcome to instructed him not to answer. That

15 is certainly your decision, and you know, if we

16 have to seek assistance from the Court to be

17 able to ask questions about his potential

18 biases, so be it. And we have to bring him

19 back, so be it. I don't think this is going to

20 take terribly long to go through, but if you

21 want to instruct him not to answer those

22 questions, certainly do so. It doesn't call

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1 for privilege and --

2 MR. KACHOUROFF: I'll -- I'll let

3 you know I'm not worried about privilege. It

4 is outside the scope of his opinions. He is

5 not being offered for any of this. If you want

6 to claim that it's bias, you know, go ahead and

7 ask your questions. I'll let it go on a little

8 bit, but I'm not going to sit here and we're

9 going to go over every lurid detail in Georgia.

10 MR. LETKEWICZ: Well, actually, I'm

11 not going to be going over every lurid detail

12 in Georgia, but we will continue.

13 (Deposition Exhibit 690 was marked

14 for identification.)

15 BY MR. LETKEWICZ:

16 Q. All right. You have a Twitter

17 handle at Robert_B_Bowes, correct?

18 A. Yes, I do.

19 Q. All right. And so you should have

20 in front of you Plaintiffs' Exhibit 690. And

21 at the top, it should be -- you should have a

22 Tweet from you that's: "Why are Brad

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<p style="text-align: right;">Page 325</p> <p>1 Raffensperger and Fani Willis trying to hide 2 relevant evidence?" 3 Do you see that? 4 A. I do see that. 5 Q. Then there is a response from a 6 Tutter (Alpha Mouse): "There is not evidence. 7 There is only copium and hopium." 8 Do you see that? 9 A. Yes. 10 Q. Then you respond: "The system logs 11 show the fraud. Tens of thousands of ballots 12 should not have been county just in that one 13 county. It rigged the result to steal it for 14 creepy Joe." 15 And I assume you mean should not 16 have been counted and not "should not have been 17 county," correct? 18 A. Correct. 19 Q. And "creepy Joe," you are referring 20 to Joe Biden, correct? 21 A. Yes. 22 Q. Do you believe that Smartmatic's</p>	<p style="text-align: right;">Page 327</p> <p>1 steal elections? 2 A. I think you asked that already. 3 Q. So no, you don't know? 4 A. I said not designed to. 5 Q. Do you believe that Smartmatic's 6 election technology software was used to steal 7 elections before the 2020 election? 8 A. No. I think you asked that one -- 9 you asked that one too. 10 MR. LETKEWICZ: Can you put Tab 9 in 11 the chat. This will be marked as Plaintiff's 12 Exhibit 691. 13 THE WITNESS: Can you share that? 14 BY MR. LETKEWICZ: 15 Q. Oh, sure. Absolutely. 16 (Deposition Exhibit 691 was marked 17 for identification.) 18 BY MR. LETKEWICZ: 19 Q. All right. So if we start here, 20 there is a Tweet from a Serenity, and it's -- 21 appears to be quoting from a Lieutenant Colonel 22 Anthony Shaffer, and it says: "We have</p>
<p style="text-align: right;">Page 326</p> <p>1 election technology or software was used 2 outside of Los Angeles County in the 2020 3 election? 4 A. No. 5 Q. Do you believe that Smartmatic 6 helped steal the 2020 election for Joe Biden? 7 A. No. 8 Q. Do you believe that Smartmatic's 9 election technology or software is designed to 10 rig elections? 11 A. Not designed to. 12 Q. Do you believe that Smartmatic's 13 election technology or software was compromised 14 or hacked by China or any other foreign country 15 during the 2020 election? 16 A. I do not know. 17 Q. Do you believe that Smartmatic's 18 voting machines were connected to the Internet 19 during the 2020 U.S. election? 20 A. Don't know. 21 Q. Do you believe that Smartmatic's 22 election technology software were designed to</p>	<p style="text-align: right;">Page 328</p> <p>1 evidence of a massive transfer of competed, 2 curated ballots ready to be injected into the 3 counting centers." 4 Do you see that? 5 A. Yes. 6 Q. Then there is a response from 7 Patrick Byrne, and he responds: "He is 8 absolutely correct." 9 Do you see that? 10 A. Yes. 11 Q. And Mr. Byrne was the former CEO of 12 Overstock.com, correct? 13 A. Yes. 14 MR. LETKEWICZ: And if you -- if you 15 just scroll down a little bit. 16 BY MR. LETKEWICZ: 17 Q. There is a response from a Wag the 18 Dog that states: "Do you know when this took 19 place? I've never seen it before. Thanks." 20 And you respond: "November 2020," 21 correct? 22 A. Yes.</p>

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<p style="text-align: right;">Page 329</p> <p>1 Q. So you agreed with Lieutenant 2 Colonel Shaffer and Mr. Byrne that there is 3 evidence of a massive transfer of completed, 4 curated ballots ready to be injected into the 5 counting centers in connection with the 2020 6 election? 7 A. That was undisputed by the postal 8 inspector. 9 Q. It's fair to say that you're a 10 critic of electronic voting machines, correct? 11 A. No, that's not fair to say. 12 Q. Okay. Well, do you believe that -- 13 do you believe that electronic voting machines 14 should not be used in elections? 15 A. They should be used if they're 16 secure. If they're not, you know, manipulated. 17 With the right controls, they could be a 18 benefit, but right now I don't see that. 19 MR. LETKEWICZ: All right. I 20 probably -- I'm just going to look over my 21 notes. I probably have five minutes or less of 22 remaining questions, but I just need to go</p>	<p style="text-align: right;">Page 331</p> <p>1 Mr. Lindell's statements." 2 Did you speak with Mr. Lindell 3 regarding whether or not his statements had a 4 negative impact on My Pillow? 5 A. No. I think you asked that, and my 6 response then was no too. 7 Q. And did you speak with anyone at My 8 Pillow as to whether or not Mr. Lindell's 9 statements had a negative impact on My Pillow? 10 A. No. 11 Q. Did you have any conversations with 12 Mr. Gorowsky regarding -- strike that. 13 Going to Page 23 here, Mr. Gorowsky 14 writes in the middle of the first paragraph 15 under C: "I understand that My Pillow's retail 16 sales were highly profitable and critical to 17 its success because retailers primarily sold 18 the My Pillow product, which was My Pillow's 19 highest margin product." 20 Do you see that? 21 A. Yes. 22 Q. Do you know what the My Pillow's</p>
<p style="text-align: right;">Page 330</p> <p>1 through my notes and consult with my colleague. 2 So we're just about done, so why don't we just 3 break for five minutes. 4 MR. KACHOUROFF: Okay. 5 THE VIDEOGRAPHER: We are going off 6 the record at 4:40 p.m. 7 (A short recess was taken.) 8 THE VIDEOGRAPHER: We are back on 9 the record. 4:46 p.m. 10 MR. KACHOUROFF: Oh, wait a minute. 11 I don't know if we have Chris Letkewicz. 12 THE VIDEOGRAPHER: Yeah, he's here. 13 MR. LETKEWICZ: Oh, sorry. I think 14 I -- I was on mute. Can you hear me? 15 THE VIDEOGRAPHER: Yeah. 16 MR. LETKEWICZ: All right. Sorry. 17 BY MR. LETKEWICZ: 18 Q. All right. Can -- if we can go back 19 to Mr. Gorowsky September 22nd report and 20 specifically going back to Subsection C 21 concerning: "My Pillow has been negatively 22 impacted financially as a result of</p>	<p style="text-align: right;">Page 332</p> <p>1 profit margin was on its My Pillow product in 2 2020? 3 A. For -- for the retail in-store 4 sales? 5 Q. Yes. 6 A. I think it was something like 40, 50 7 percent. It was pretty -- pretty -- pretty 8 nice. 9 Q. And where can I -- and what's the 10 base of that -- 11 A. Well, I -- I don't -- don't remember 12 where I saw that. I -- I just remember in 13 the -- in the -- in their My Pillow financial 14 statements I saw it was pretty good. But 15 then -- then the -- you know, the big-box 16 stores are canceling them. So I guess that's 17 the point that Gorowsky was making. 18 Q. And -- well, he says here that the 19 reason why this hurt Smartmatic -- not 20 Smartmatic. The other reasons it hurt My 21 Pillow, the loss of the retail sales is that 22 retail sales do not require the significant</p>

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<p style="text-align: right;">Page 333</p> <p>1 advertising and cost and revenue-sharing</p> <p>2 agreements/affiliate marketing costs needed to</p> <p>3 generate direct-to-consumer sales.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And do -- and -- but isn't it, in</p> <p>7 fact, true that in the 2021 and 2022 time frame</p> <p>8 that My Pillow's advertising cost as a</p> <p>9 percentage of income went down even though its</p> <p>10 direct-to-consumer sales were going up?</p> <p>11 MR. KACHOUROFF: Objection to form.</p> <p>12 THE WITNESS: I don't know. I</p> <p>13 thought that they -- maybe the higher</p> <p>14 advertising costs occurred into 2022 -- maybe</p> <p>15 it was just a lagging effect that you see in</p> <p>16 2021 because mostly cancelations may have been</p> <p>17 late in the -- late in the year. So 2021 is</p> <p>18 not a real good full-run-rate measure.</p> <p>19 BY MR. LETKEWICZ:</p> <p>20 Q. Okay. If you could go to Exhibit 5</p> <p>21 of Mr. Gorowsky's report, and this is on Page</p> <p>22 40 of his report.</p>	<p style="text-align: right;">Page 335</p> <p>1 A. Yes.</p> <p>2 Q. And then if we go to 2020.</p> <p>3 A. It went up to 112 million, yeah.</p> <p>4 Q. No. Hold on. Not my question.</p> <p>5 A. Okay.</p> <p>6 Q. I didn't ask my question.</p> <p>7 In 2020 the direct-to-consumer sales</p> <p>8 went up to 86.3 percent of income, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And it went up to 96.5 percent of</p> <p>11 sales in 2021, correct?</p> <p>12 A. Right.</p> <p>13 Q. And in 2022 direct-to-consumer sales</p> <p>14 was 96.9 percent, correct?</p> <p>15 A. Yeah. Yeah. Big-box cancelations,</p> <p>16 right.</p> <p>17 Q. And if we then look at</p> <p>18 advertising/promotional, we look at those costs</p> <p>19 as a percentage of income, it's 31.6 percent in</p> <p>20 2020, correct?</p> <p>21 A. 112 of 355, that's about right.</p> <p>22 Yeah.</p>
<p style="text-align: right;">Page 334</p> <p>1 A. Okay.</p> <p>2 Q. Let me know when you are there.</p> <p>3 A. Yes, I'm there.</p> <p>4 Q. Okay. So if we look at 2019 --</p> <p>5 let's see -- direct-to-consumer sales were 68.9</p> <p>6 percent of My Pillow's sales.</p> <p>7 Do you see that?</p> <p>8 A. Yes. 165 million.</p> <p>9 Q. No. I am looking at Exhibit 5.</p> <p>10 A. Yeah. Yeah.</p> <p>11 Q. Okay.</p> <p>12 A. Under 2019, down at the bottom of</p> <p>13 Column 2019, direct-to-consumer sales.</p> <p>14 Q. I gotcha. I see what you're looking</p> <p>15 at, yes.</p> <p>16 A. 165 million. Uh-huh.</p> <p>17 Q. Yes. And that was 68.9 percent of</p> <p>18 My Pillow's sales, correct?</p> <p>19 A. Right.</p> <p>20 Q. And My Pillow's</p> <p>21 advertising/promotional costs as a percent of</p> <p>22 total income in 2019 was 34.4 percent, correct?</p>	<p style="text-align: right;">Page 336</p> <p>1 Q. And in 2021 it was 31.4 percent,</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. And in 2022 it was 33 percent,</p> <p>5 correct?</p> <p>6 A. Right.</p> <p>7 Q. And those were -- and those numbers</p> <p>8 are all lower than the 34.4 percent of what the</p> <p>9 advertising/promotional cost as a percentage of</p> <p>10 income were in 2019, correct?</p> <p>11 A. Which numbers? Because the absolute</p> <p>12 numbers have kept going north. So he is right</p> <p>13 that -- Gorowsky is right that the advertising</p> <p>14 expenditures doubled from 2019 to 2021. It</p> <p>15 went from 82 million --</p> <p>16 Q. So --</p> <p>17 A. -- to 166 million, but from a</p> <p>18 percentage basis, you -- you are correct.</p> <p>19 Q. Thank you. All right.</p> <p>20 And go to Page 25 of Mr. Gorowsky's</p> <p>21 report, and in the first -- in the middle of</p> <p>22 the first full paragraph, it says: "In</p>

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<p style="text-align: right;">Page 337</p> <p>1 addition, product and freight costs increased</p> <p>2 in 2021, which also negatively impacted My</p> <p>3 Pillow's margins and profits."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Are you aware of any My Pillow</p> <p>7 supplier charging My Pillow higher amounts</p> <p>8 because of what Mr. Lindell said regarding the</p> <p>9 2020 election?</p> <p>10 A. On an individual basis?</p> <p>11 Q. Yes.</p> <p>12 A. Suppliers?</p> <p>13 Q. Yes.</p> <p>14 A. I thought I heard -- not</p> <p>15 specifically, no, but I think I heard that</p> <p>16 there were -- no. Let's just leave it at that.</p> <p>17 No, the answer is no.</p> <p>18 Q. Are you aware of a My Pillow freight</p> <p>19 provider charging higher rates because of what</p> <p>20 Mr. Lindell said regarding the 2020 election?</p> <p>21 A. I am not.</p> <p>22 Q. All right. I'm just going to ask</p>	<p style="text-align: right;">Page 339</p> <p>1 My question is: How did you</p> <p>2 determine that SGO distributed \$100 million to</p> <p>3 its investors during 2018 to 2020?</p> <p>4 A. So from the -- from the cash flow</p> <p>5 statements and from the balance sheets.</p> <p>6 Q. And how did the cash -- which cash</p> <p>7 flow statements indicated to you --</p> <p>8 A. Cash flow -- it's a statement of</p> <p>9 changes in stockholders' equity in those three</p> <p>10 years. Look at the statement of changes to</p> <p>11 stockholders' equity, and you will see the</p> <p>12 ending balances are reduced, and just from --</p> <p>13 from point -- like from 2018 to 2020, there was</p> <p>14 about 100 million capital that -- that left the</p> <p>15 company.</p> <p>16 Q. Can you -- which specific financial</p> <p>17 statements did you look at to reach this</p> <p>18 conclusion that there was a \$100 million</p> <p>19 distribution?</p> <p>20 A. From the -- the consolidated</p> <p>21 statements of SGO.</p> <p>22 Q. So this was based on your review of</p>
<p style="text-align: right;">Page 338</p> <p>1 you a couple final things about your July 9th</p> <p>2 report. All right. And if you could go to</p> <p>3 Page 8.</p> <p>4 A. Of what?</p> <p>5 Q. Of your July 9 report.</p> <p>6 A. Mine?</p> <p>7 Q. Yes.</p> <p>8 A. Okay.</p> <p>9 Q. Paragraph 23.</p> <p>10 A. Yep.</p> <p>11 Q. And in the middle of 23 or so, it</p> <p>12 says: "Smartmatic is in runoff mode, and its</p> <p>13 parent company starved SUSA of capital by</p> <p>14 choosing to distribute 100 million (more than</p> <p>15 half of the parent company, SGO International</p> <p>16 Corporation's 2017, 180 million of capital</p> <p>17 equity) to its investors during 2018 through</p> <p>18 2020."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. How did you -- now, you don't cite</p> <p>22 any documents in this particular sentence.</p>	<p style="text-align: right;">Page 340</p> <p>1 --</p> <p>2 A. Well, let me -- hold on. Let me</p> <p>3 just clarify that. This was referring to</p> <p>4 SGO -- my -- that's based on my recollection.</p> <p>5 Q. Okay. So this was based on your</p> <p>6 review of SGO's financial statements for 2018,</p> <p>7 2019, 2020, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And where did this \$100 million</p> <p>10 distribution come from? Was this Smartmatic</p> <p>11 profits, Smartmatic revenues?</p> <p>12 A. From the assets of the company.</p> <p>13 They -- they liquidated assets of the company</p> <p>14 to -- to distribute to -- to equity holders and</p> <p>15 to repay debt.</p> <p>16 But on the debt side, on the 46 or</p> <p>17 48 million that was paid off, that was -- that</p> <p>18 was borrowed a couple years earlier and then</p> <p>19 just paid back. So they had -- they had assets</p> <p>20 of the company that had to pay -- pay for this</p> <p>21 massive capital out-flight.</p> <p>22 And, again, when you -- when you're</p>

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<p style="text-align: right;">Page 341</p> <p>1 distributing that much capital more than the</p> <p>2 majority of capital, that is not conducive for</p> <p>3 growth. And -- and if you -- if you bring your</p> <p>4 equity down 100 million to under 80 million,</p> <p>5 you have less ability to finance and fund</p> <p>6 operations, so that's another reason I</p> <p>7 concluded that they were in -- in a runoff</p> <p>8 mode.</p> <p>9 Q. So this -- was this 46 million on</p> <p>10 top of the \$100 million distribution?</p> <p>11 A. Yes. The debt payoff was</p> <p>12 independent of the equity depletion.</p> <p>13 Q. And in which financial statement did</p> <p>14 you find that Smartmatic or SGO had repaid \$46</p> <p>15 million of debt in 2019 and 2020?</p> <p>16 A. The balance sheet listed ending --</p> <p>17 ending -- yearend amounts of debt owed, and it</p> <p>18 also was reflected on the -- the cash flow</p> <p>19 statement of changes based on borrowings and</p> <p>20 financings. It was cash flow from financing</p> <p>21 activity. You could see the outflow and the</p> <p>22 cash flows from financing activity.</p>	<p style="text-align: right;">Page 343</p> <p>1 "its overseas workforce locations and foreign</p> <p>2 components could not meet the FIPS, VVSG, and</p> <p>3 EAC requirements."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And what is your basis that</p> <p>7 Smartmatic could not obtain FIPS, VVSG, and EAC</p> <p>8 standards because it had workers overseas and</p> <p>9 uses foreign components?</p> <p>10 A. There was -- there were internal</p> <p>11 e-mails that -- that talked about how they</p> <p>12 couldn't -- it could not -- Smartmatic couldn't</p> <p>13 win contracts, particularly the one in --</p> <p>14 listed in Paragraph 61 that -- you know, they</p> <p>15 had -- I guess there is an indication that they</p> <p>16 had a bunch of people working in Panama and</p> <p>17 that would not have given them the -- the</p> <p>18 ability to get certified by EAC.</p> <p>19 The components didn't meet FIPS.</p> <p>20 They didn't meet Voluntary Voter System</p> <p>21 Guidelines, and they didn't meet EAC</p> <p>22 requirements. Those were in the -- in the --</p>
<p style="text-align: right;">Page 342</p> <p>1 Q. And when you're talking about the</p> <p>2 yearend amounts of debt in the cash flow</p> <p>3 statements, you're referring to SGO's cash</p> <p>4 flows, correct?</p> <p>5 A. Right.</p> <p>6 Q. And so this would have been based on</p> <p>7 your review of SGO's 2019 and 2020 financial</p> <p>8 statements, correct?</p> <p>9 A. That's right.</p> <p>10 Q. Okay. And --</p> <p>11 A. Smartmatic USA did not have any</p> <p>12 equity so -- or very little. It had negative</p> <p>13 equity of \$117,000, so they -- they -- they --</p> <p>14 this was -- this was SGO, you know, major</p> <p>15 changes in their -- in their capital structure.</p> <p>16 Q. If you go to Paragraph 60 of your</p> <p>17 July 9 report.</p> <p>18 A. Did you say 6-0?</p> <p>19 Q. 6-0 on Page 15.</p> <p>20 A. Okay.</p> <p>21 Q. And in the last sentence, it</p> <p>22 states -- you're referring to Smartmatic --</p>	<p style="text-align: right;">Page 344</p> <p>1 Q. Let's --</p> <p>2 A. I picked that up from the internal</p> <p>3 e-mails.</p> <p>4 Q. Okay. So let's -- let's break</p> <p>5 that's down a little bit.</p> <p>6 A. Okay.</p> <p>7 Q. So this -- your statement about the</p> <p>8 overseas workforce locations --</p> <p>9 A. Look at 62 for -- for that too.</p> <p>10 Q. Hold on. Let me ask my -- let me</p> <p>11 ask my question, sir.</p> <p>12 Your reference to the overseas</p> <p>13 workforce locations could not meet the FIPS,</p> <p>14 VVSG, and EAC requirements, the basis for that</p> <p>15 is this internal communication that you are</p> <p>16 citing here in Paragraph 61, correct?</p> <p>17 A. And in 62, correct.</p> <p>18 Q. And any other paragraphs?</p> <p>19 A. Let's see. Just those two from --</p> <p>20 from what I am looking at right now. I just --</p> <p>21 I think those are the only two.</p> <p>22 Q. And the foreign components could not</p>

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<p style="text-align: right;">Page 345</p> <p>1 meet the FIPS, VVSG, and EAC requirements, the</p> <p>2 bases of that is what is set forth in Paragraph</p> <p>3 62, correct?</p> <p>4 A. I believe I said and 61.</p> <p>5 Q. So that one -- 61 also talks about</p> <p>6 foreign components?</p> <p>7 A. Foreign workforce locations is 61,</p> <p>8 and foreign components, I believe, is 62.</p> <p>9 Q. Okay. And is there any other</p> <p>10 communication that you discussed in your report</p> <p>11 in which foreign components could not meet the</p> <p>12 FIPS, VVSG, and EAC requirements?</p> <p>13 A. Let's see. I can't recall off the</p> <p>14 top of my head. I -- I think those are the --</p> <p>15 the main cites for this.</p> <p>16 Q. And if we look at Paragraph 62, you</p> <p>17 state that the e-mail chain on March 19, 2021</p> <p>18 from Edwin Smith to Jake Perry, James Long,</p> <p>19 Robert Cook, Antonio Mugica, Pedro Mugica,</p> <p>20 Samira Saba, and Richard Ades discussing S1,</p> <p>21 which was introduced in the senate and includes</p> <p>22 various election security issues.</p>	<p style="text-align: right;">Page 347</p> <p>1 Q. Okay. And which VVSG standard rule</p> <p>2 bars the use of foreign components?</p> <p>3 A. I don't know.</p> <p>4 Q. And which EAC requirements bars the</p> <p>5 use of foreign components?</p> <p>6 A. Don't know. I just -- we found</p> <p>7 these internal e-mails that described the</p> <p>8 concern.</p> <p>9 MR. LETKEWICZ: All right. Well,</p> <p>10 Mr. Bowes, I appreciate your time. At this</p> <p>11 time I have no further questions.</p> <p>12 I will -- just to reiterate my prior</p> <p>13 statement, we will need to leave the deposition</p> <p>14 open based on Mr. Kachouroff's representation</p> <p>15 that you may issue a rebuttal report to</p> <p>16 Professor James. We, of course, again, reserve</p> <p>17 all rights, including moving to strike the</p> <p>18 report as untimely and to redepose you about</p> <p>19 any such rebuttal report.</p> <p>20 MR. KACHOUROFF: Bonnie, we'll read.</p> <p>21 Can I get a time check, please.</p> <p>22 THE VIDEOGRAPHER: One moment, sir.</p>
<p style="text-align: right;">Page 346</p> <p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. You're aware that S1 did not become</p> <p>4 law. Are you aware of that?</p> <p>5 A. I'm not sure.</p> <p>6 Q. And if it did not become law, then</p> <p>7 there would not be a prohibition of foreign</p> <p>8 component -- components to meet the FIPS, VVSG,</p> <p>9 and EAC requirements, correct?</p> <p>10 A. I don't know that that's the case.</p> <p>11 It's -- they -- in fact, they were still --</p> <p>12 they still may have been locked out because of</p> <p>13 that.</p> <p>14 Q. If S1 --</p> <p>15 A. The FIPS -- the FIPS standard was</p> <p>16 there before S1, so I think -- I -- I don't</p> <p>17 think your question is correct.</p> <p>18 Q. Okay. So which FIPS standard bars</p> <p>19 the use of foreign components?</p> <p>20 A. I don't know. I really don't know.</p> <p>21 That's not my area. I refer to the -- the</p> <p>22 cyber experts on that one.</p>	<p style="text-align: right;">Page 348</p> <p>1 6 -- 6 hours and 34 minutes.</p> <p>2 MR. KACHOUROFF: Okay. Thank you</p> <p>3 very much. Thank you, guys.</p> <p>4 THE VIDEOGRAPHER: Real quick,</p> <p>5 Mr. Kachouroff, would you like to order a copy</p> <p>6 of the transcript and/or video at this time?</p> <p>7 MR. KACHOUROFF: Just the transcript</p> <p>8 will be fine. I already sent that to -- to</p> <p>9 Bonnie.</p> <p>10 THE VIDEOGRAPHER: All right.</p> <p>11 Mr. --</p> <p>12 MR. LETKEWICZ: And can you --</p> <p>13 THE VIDEOGRAPHER: I have -- I have</p> <p>14 a standing order for you, sir.</p> <p>15 MR. LETKEWICZ: Yeah. So just make</p> <p>16 sure to send -- to send the rough tonight.</p> <p>17 MR. KACHOUROFF: Are we concluding</p> <p>18 this video right now?</p> <p>19 MR. LETKEWICZ: Yes.</p> <p>20 THE VIDEOGRAPHER: This concludes</p> <p>21 the deposition of Robert Bowes. We are going</p> <p>22 off the record at 5:10 p.m. Central time.</p>

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1	(Whereupon, the proceeding was	1	ACKNOWLEDGMENT OF DEPONENT
2	concluded at 5:10 p.m.)	2	I, ROBERT BOWES, do hereby certify that I
3		3	have read the foregoing transcript of my
4		4	testimony taken on 8/6/24, and further certify
5		5	that it is a true and accurate record of my
6		6	testimony (with the exception of the
7		7	corrections listed below):
8		8	Page Line Correction
9		9	_____
10		10	_____
11		11	_____
12		12	_____
13		13	_____
14		14	_____
15		15	_____
16		16	_____
17		17	_____
18		18	_____
19		19	ROBERT BOWES
20		20	
21		21	
22		22	

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1	CERTIFICATE OF NOTARY PUBLIC
2	I, Bonnie L. Russo, the officer before
3	whom the foregoing deposition was taken, do
4	hereby certify that the witness whose testimony
5	appears in the foregoing deposition was duly
6	sworn by me; that the testimony of said witness
7	was taken by me in shorthand and thereafter
8	reduced to computerized transcription under my
9	direction; that said deposition is a true
10	record of the testimony given by said witness;
11	that I am neither counsel for, related to, nor
12	employed by any of the parties to the action in
13	which this deposition was taken; and further,
14	that I am not a relative or employee of any
15	attorney or counsel employed by the parties
16	hereto, nor financially or otherwise interested
17	in the outcome of the action.
18	
19	_____
20	Notary Public in and for
21	the District of Columbia
22	My Commission expires: August 14, 2025